THE Practick Part OF THE LAW:

Shewing the OFFICE of an

ATTORNEY,

And a GUIDE for

SOLICITORS

In the Courts of the *Chancery*, *King's-Bench*, *Common-Pleas* and *Exchequer*, with the manner of their Proceedings in any Action Real, Personal, or Mixt (from the Original to the Execution) in all Courts; with the exact Fees of all Officers and Ministers of those COURTS.

To which is added

The Practice of the *Courts* in the City of *LONDON*, *Court of Admiralty*, *Ecclesiastical Courts*, and other Inferiour *Courts* in the Country.

Carefully Revised, Corrected, and much Enlarged, with an Exact TABLE, *wherein are contained all the Principal Matters in the whole Book.*

LONDON,
Printed by the Assigns of *Richard* and *Edward Atkins* Esquires; for *Henry Twyford* in *Vine-Court Middle-Temple*, 1681.

883.f.13

I do allow of the Printing of the *Compleat Attorney* and *Solicitor*.

FRA: NORTH.

FH
MVSEVM
BRITANNICVM

TO THE READER.

READER,

HAving observed the many Errours daily committed through the mistake of the nature of the Action to be sued, and consequently, as well the misgrounding of the Action, as the undue Prosecution thereof, to the utter

utter loſs of many a Cauſe, hath put my Intentions on work to give thee ſome light in ſuch ways, where either thou doſt voluntarily go to purſue thy Right, or art involuntarily driven to defend thy Right; To that purpoſe was this Compoſure undertaken, wherein thou ſhalt find the whole progreſs of the *Law* in the Practical part. So that whether thou haſt buſineſs of thine own, or on the behalf of another, here upon all occaſions thou maiſt find Inſtructions for a due and full proſecution thereof; there being ſcarce any Actions, *Real*, *Perſonal*, or *Mixt*, in what

Court

Court soever, but their Nature, Progress, Judgment, and Execution is here explained, with the Duty of all Officers, *Judiciary*, and *Ministerial*; as also the justifiable Fees and Allowances of the *Prothonotaries*, *Masters* of Offices, *Secondaries*, *Clerks*, *Attorneys*, *Sheriffs*, *Under-Sheriffs*, *Bayliffs* of Franchises, and prescribed Liberties, the Practice of the *High Court* of *Chancery*, the Fees of the *Six Clerks*, *&c.* All which being methodically disposed, with an exact *Table* to every particular will, I hope, render thee a Benefit worthy of thy kind acceptance. But especially now, since

since the many and material Additions and Amendments of this Impression, do in a higher measure challenge the same.

Farewel.

The Reader may please to take Notice, That the Errors of the Printer that escaped in the former Impression (in the Court of Common Pleas) *were carefully perused, corrected and amended, by the hand of that late Worthy Gentleman,* Stephen Mundy *of the* Inner Temple, *Esquire.*

THE

The COMPLEAT ATTORNEY; AND SOLICITOR.

Being full and exact Directions for all manner of Proceedings at Law, in all Courts whatsoever: Together with all Fees incident thereunto.

THE Office of an Attorney requires much knowledge both of the Theoretick and Practick Parts of the Law.

The one is to be gained out of the Body of the Law, and cannot be expected to be ascertained in this small Tract.

For the better enabling of him to the latter, is this ensuing Discourse intended, wherein we shall begin with the Court of *Common-Pleas*, as being of the largest extent, in relation to the multiplicity of *Actions*, both *Real*, *Personal*, and *Mixt*, properly incident to that Court, wherein all persons of the Nation, either as Plaintiffs or Defendents, are more or less concerned.

The *Common-Pleas* hath been a Court *temps dont Memory*, &c. 2 *Inst.* 22.

This Court consists of a Chief Justice, and three other Judges.

In *Edw.* 3. time there were 9 Justices at once; in King *Johns* time, 6. in *E.* 1. there were five, and at the latter end of King *James*, five in all.

The Subordinate Officers are:

The *Custos Brevium*, or Keeper of the Writs, who is commonly called the Chief Clerk of the *Common-Pleas*.

Three Prothonotaries, the ſecond of which was anciently, and is, incident to the *Cuſtos Brevium* for the time being, to be diſpoſed of, and to be preſented to the Chief Juſtice to be Sworn. There are ſeveral Clerks belonging to theſe *Prothonotaries* Offices, who draw all Pleadings, and enter them, and exemplifie and record all Common Recoveries.

The *Clerk of the Warrants*, who entreth all Warrants of Attorney, and inrolleth all Deeds, acknowledged before the Juſtices of the Court.

Philizers, who make all manner of mean proceſs upon original Writs *before appearance.*

The *Clerk of the Eſſoyns*, who doth enter the Eſſoyns and Exceptions, in all Actions wherein Eſſoyns lye, and prepareth and maketh all the Rolls uſed for the Court.

The *Clerk of the Outlawries*, who maketh the *Capias Utlagatum*, upon return of the Exigents brought in unto him: This Office is properly incident to the Attorney General for the time being.

The *Clerk of the Superſedeas*, who makes Writs to ſuperſede the Outlawing of perſons, granted by Letters-Patents under the great Seal of *England*.

The *Exigenters*, who are four in number, and make the Writs of Exigents and Proclamations, in order to Outlawry upon the *Plures Capias*, brought in unto them.

The *Clerk of the Juries*, who makes the Writs of *Habeas corpora*, and *Diſtringas Jur.* for the Tryal of Iſſues. This Office alſo is in the Diſpoſition of the *Cuſtos Brevium*.

The *Chyrographer*, who doth make the Indentures of Fines levyed, and hath many ſubordinate Clerks for the ſeveral Counties where the Lands lye. This Office is by Patent.

The *Clerk of the Kings ſilver*, who doth enter on

Re-

Record the Money which the King is to have upon Fines, for the Poſt-Fines, according to the yearly value of the Land, as the ſame is rated on the Writs of Covenant.

The *Clerk of the Errors*, who makes all *Superſedeas*'s upon Writs of Error, and doth tranſcribe the Records out of the Treaſury, belonging to the *Common-Pleas* into the *Kings-Bench*.

The *Clerk of the Treaſury*, who hath the keeping of the Rolls entred of Record in the Court, and the making forth of Copies and Exemplifications thereof, and alſo of Records of *Niſi prius*.

The *Proclamator of the Court*, the *Keeper of the Court*, the Office of the Inrolment of Fines and Recoveries, erected by the Statute of 23 *Eliz.* 3. This Office is diſpoſed by the Puiſne Judges.

Four Cryers, or *Tip-ſtaves*, Subſtitutes of the Proclamator.

The *Warden of the Fleet*, who by himſelf, or his Deputy, is to attend the Court, that Priſon being proper for all Commitments out of that Court.

The *Pleaders* are all *Sergeants* of the *Coife*, none under that degree being allowed to plead in that *Court*.

The *Attornies* are very many, being not limited to any ſet number; and are ſuch as either had ſtudied the Law for ſome years in ſome Inn of *Chancery*, where was uſually their reſidence, or had ſerv'd for the ſpace of ſix or ſeven years, with ſome able Clerk or Attorney of the *Court*, whereby they come to be very knowing in the Practice of the *Court*, the better to manage their *Clients* Cauſes with ability and integrity, to the honour of the *Court*, and their own credit.

Anciently they were limited, as appears in 20 *E.* 1. and 71. and by the Records in the Tower of 20 *E.* 4. *ſunt ſepties viginti*: vid. *Selden*'s Note on *Forteſcue* 3.

At the time of their being admitted Attorneys,

there is an Oath administred unto them as follows.

YOU shall do no falshood, nor deceit, nor consent to any to be done in this Court; and if you know of any to be done, you shall give knowledge thereof to my Lord Chief Justice, or other his Brethren Justices of this Court, that it may be reformed. You shall delay no man for lucre or malice, you shall increase no Fees, but be contented with the old accustomed Fees. You shall plead no Foreign Plea, nor sue any Foreign Suits unlawfully to hurt any man, but such as shall stand with the Order of the Law and your Conscience. You shall seal all such Proceſs, as you shall sue out of this Court, with the Seal thereof, and see the Kings Majesty, and the Lord Chief Justice discharged for the same. You shall not wittingly nor willingly sue, nor procure to be sued, any false Suit, nor give aid or consent to the same, on pain of being expulsed from the Court for ever. And further, you shall use and demean your self in the Office of an Attorney within the Court, according to your Learning and Discretion. So help you God.

The Chief *Prothonotary* swears all Attorneys and other Officers.

Having taken his Oath, he is to pay the Fees of *Court* incident thereunto, as follows:

Imprimis. To the Judge's Box 20 *s.*

To the Secondary of the Chief Prothonotary, who giveth the Oath, 12 *d.* And for entring his Certificate, 12 *d.*

To the *Cryers*, *Court-Keeper*, and other Officers, 11 *s.*

Then must he have the Certificate of his swearing from the Prothonotary, in whose Office he intends to enter, which is usually made, as follows.

De Termino Sancti Hillarii, *Anno Regni* Caroli *secundi nunc Regis* Angliæ, *&c.* xxvj. *&* xxvij.

T. D. *Gen. Jurat. in Cur.* 10 *die* Feb. *isto eodem Termino.*

To which the Prothonotary subscribeth his name.

Which

Which being delivered to the *Clerk* of the *Warrants*, he enters his Name in the Roll of the Attorneys Names.

The *Clerk* of the *Warrants* hath for the entring thereof 4*s*. and 4*d*. and for the Roll of that Term 4*d*.

And ſo he ſtands charged to pay 4 *d*. for the future, ſo long as he continueth an Attorney of the *Court* for each Term.

The Attorney thus fitted for practice, he muſt be very careful in taking right and due Inſtruction from his *Client*, and inform himſelf of whatever is materially incident to his *Cauſe*, that ſo he may know what manner of Action is moſt proper to be brought on the behalf of his *Client*; for a *Cauſe* once throughly weighed and rightly grounded, goes on with a great deal of eaſe and ſatisfaction, both to the *Attorney* and *Client*.

The *Attorney* ought to be throughly verſed in the nature of all ſorts of Writs, as in the Regiſter, *Natura brevium*, Terms of the Law, and other Books now extant.

To begin with Actions of Debt.

DEbt lyes properly where one Man oweth another a ſum of Money by Bond, Bill, Bargain, or certain Contract, or upon a Leaſe reſerving Rent.

If a Man oweth another 10 *l*. and hath a Note or *Memorandum* under his hand without a Seal, an Action of Debt upon a *mutuatus* lyes, and then the Defendent may wage his Law: But if the Plaintiff bring an Action on the Caſe upon the Defendents promiſe to pay the ſame which the Law implyes, then the Defendent cannot wage his Law.

Debt lyes againſt the Heir of the Obligor, if the Executors have not ſufficient; but *nihil habet*, *per Deſcenſum* is a good Plea for the Heir.

Upon a Bond or Bill Penal for payment of ſeveral ſums of Money, at ſeveral days, within the Bond or Bill ſpecified, no Action of Debt lyes till all the days be paſt; likewiſe upon a Bill ſingle, until all the days be paſt no Action lyes: But if a Bond be with a Condition to pay Money at ſeveral days, an Action lyes for the Penalty upon Default of Payment at the firſt day. But if a Man be bound in a Recognizance to pay 100 *l.* at five ſeveral days, after the firſt failer of the firſt ſum, he ſhall have Execution for that ſum, and ſhall not ſtay till the laſt day be paſt; and ſo obſerve the diverſity between a Debt due by Recognizance, and a Debt due by Bond: And ſo it is for a Covenant or Promiſe after the firſt Default, an Action of Covenant lyes for the one, and Caſe for the other; and note that diverſity.

To commence an Action of Debt.

Firſt, you are to take notice of your Plaintiffs name, and of his cauſe of Action, whether it ariſe by Bond or Bill, which are called *Specialties*, and otherwiſe for Arrears of Rent, Wares, Cattel ſold, or any other Chattels, or for work or ſervice done, &c. If by Bond or Bill, you muſt take an exact Note of the Defendents name, together with his Addition preciſely, as he is written in the Obligation or Bill, that ſo you may make your Original, and your other Proceſs, to agree with the Obligation, otherwiſe it is Erroneous.

That done, you muſt make a ſhort Note to the *Curſitor*, if in Debt, as follows.

Pr. J. C. *nuper de I. O. Gen. alias* J.C. *de L. in Com. Her. Gent. quod juſte*, &c. *reddat.* T. B. 40 l. *&c.* 15 Paſ. W. S.

If you lay your Action in the Countrey, then thus.

Pr. J. L. *nuper de* S. *in Com. prædict.* Yeoman, *alias* (literatim, as it is written in the Bonds) Yeoman: *Re* R. J. 50 l. *ret. cr.* Trin.

You

You may put four Names, and no more; in an *Orig.* in Debt or Treſpaſs.

Againſt two Defendents.

Pr. W. B. *nuper de* L. Yeoman, *alias* W. B. *de* B. *in Parochia de* L. Yeoman. *Pr.* G. B. *nuper de* Lond. Yeoman, *alias* G. B. *de* F. *in Parochia de* G. *in Com.* S. Yeoman, 15 Pas. M. W. 151. *uterque.*

And ſo if there be three or four *quilibet.*

Which being done, you muſt carry your Note, and deliver it to that particular *Curſitor*, who is for the County you lay your Action in, who maketh your Original, and delivereth it you under Seal.

This Original is your firſt Proceſs, and is a Summons: and although it iſſue out of the *Chancery*, yet it is made returnable before the Juſtices of the *Common-Pleas* at a certain return: and between the Teſte and return of the ſame (as alſo in all other ordinary Writs to be ſued forth, and procured upon the ſame) muſt be fifteen days at the leaſt before appearance.

Note, That this Writ may bear Teſte out of the Term, becauſe it is to be underſtood, that the *Court* of *Chancery* is always open.

All other Proceſs ſued forth at the *Court* of *Common-Pleas*, muſt bear Teſte ſometime within the Term, and in the name of the Chief Juſtice of the ſame *Court* for the time being, and one Writ is to bear Teſte from the return of another, as namely the *Capias* (which is the next Writ to the Original in an Action of Debt) from the Teſte day of the return of the Original, the *Alias Capias* from the return of the *Capias*, and the *Plures* from the return of the *Alias*, and the Exigent and Proclamation from the return of the *Plures*; and theſe are the ſeveral Writs in order to an Outlawry.

1. Before the Conqueſt, and a good while after, none could have been outlawed but for Felony, *Mirr.* cap. 1. 5. 3.

2. In *Bracton*'s time, and ſomewhat before, the Judges reſolved, that Proceſs of Outlawry ſhould lye in all Actions that were *vi & armis*, *Bract. lib.* 5. 421.

3. By the *Stat.* 13. 2. Proceſs of Outlawry lyes in Account.

4. By the *Stat.* 25 *E.* 3. cap. 17. Proceſs of Outlawry lyes in Debt, Detinue, and Replevin.

5. By the *Stat.* 15 *H.* 7. 9. the like Proceſs, in caſe as in Treſpaſs.

For Covenant, *Vide* Stat. 23 H. 8. *cap.* 14.

6. The Return of your Original in debt, is thus:

Pleg. de proſequend. { *Johannes Doe.* / *Richardus Roe.* }

If there be no Pledges returned upon the Original, you may plead in abatement, and it is Error.

Infra nominat. J. S. *nihil habet in Balliva noſtra per quod Sum. poteſt.*

Reſponſ. R. F. *Mil. &* A. B. *Armig. Vic.*

If there be two Defendents in the Original, the Return muſt be thus:

Infra nominat. J. C. & D. L. *nihil habent in Balliva noſtra per quod Summon. poſſunt.*

Reſponſ. R. F. & A. B. *Armig. Vic.*

If there be more than two Defendents, then thus:

Infra nominat. J. C. & *cæteri Defend. infra ſcript. nihil habent in Balliva noſtra per quod Sum. poſſunt.*

Note, It is ſaid (within our Bayliwick) where the Action lyes in *London*, where there are two Sheriffs: otherwiſe, where there is but one Sheriff, you ſay (within my Bayliwick) and the like, for all the Cities that have two Sheriffs; and likewiſe the words (*Reſponſio*) are intended only where there are two Sheriffs: Otherwiſe, you barely recite the Sheriffs name, and ſtile at the bottom or the back of the Writ. A. B. *Miles. Vic.*

Your

Your Original being thus made and returned, you must deliver the same to the *Philizer* of the County, City, or Shire, where your Action is laid, to have such further Process made thereon, either in suing to the Outlawry, or otherwise, as the present Term wherein you sue forth the same, shall by reason of the length or shortness of the time allow; observing the former Rule of fifteen days betwixt the Teste, and the return of every Process.

The ordinary and usual Process thereupon with the *Philizer*, are those formerly mentioned, which he maketh upon the Original Writ brought to him, for which you deliver him 4 *d.* as payable to the *Custos Brevium*, for filing the Original.

First, A *Capias*, for which you pay 10 *d.* besides the Seal 7 *d.* and the King's duty 6 *d.*

Secondly, An *Alias Capias*, which costs 6 *d.* and the Seals.

Thirdly, A *Plures Capias*, for which you pay 6 *d.*

The Returns whereof are as follows:

Infra nominatus J. C. *non est invent. in Balliva nostra.*

If two Defendents, thus:

J. C. & R. B. *Non sunt invent. in Balliva nostra.*

And if more than two Defendents, then thus:

J. C. & *cæteri Defendent. infra script. non sunt invent. in Balliva nostra.*

Respons. R. B. & J. S. *Vic.*

But if you intend not to sue the Defendent to an Outlawry, but that his body may be arrested, then you need not proceed further than to the *Capias* only, and deliver the same to the Under-Sheriff of the County, and procure a Warrant thereupon, and get him arrested by the Sheriffs Bayliffs, which is a great furtherance to your Clients cause, in relation to a Tryal, and procuring Judgment.

Note, That you are to pay 4 *d.* as a *post diem*, for each

each of the aforesaid Process, which you bring not into the *Philizer* by the day of the Return.

The two chief Terms, wherein to commence Suits to the Outlawry, are *Easter* and *Michaelmas* Terms, they having in them the most Returns; for if you begin in *Easter* Term you shall Outlaw the party, if he 31. 44. appear not in *Michaelmas* Term next following; and 56. if you begin in *Michaelmas* Term, you shall do the like in *Easter* or *Trinity* Term then next following.

Note, That you may have an Original Writ made returnable of a precedent Term, upon bringing a Note to the *Cursitor* within seven days after the Term begun; but if you slack the time, you lose your advantage.

Qu. This course now against a Knight, or other Free-holder, or Noble-man.

Anciently the course hath been, that if an Original Writ be made against a Knight, Esquire, Gentleman of worth, or other substantial Free-holder, that hath sufficient Lands and Tenements in the same County where the Action is laid, then ought a Summons to be returned by the Sheriff of the County, who is to execute it: And you cannot return that Original of course, by the return of (*nihil habet*, &c.) For otherwise the Defendent, if he have sufficient in the same County, & he be returned, (*nihil habet*, &c.) may bring an Action of the Case, for disabling of him in his Estate, against the Attorney for the Plaintiff, or against the Under-Sheriff of the County, who shall make such Return, to disable him upon a Summons: If he appear not, you proceed by *Pone*, and so to a distress; and if he appear not upon the *Distringas*, you have an *Alias Distringas*, and so Distress upon distress, until he appear; but this manner of proceedings by way of Summons, hath not been used of late.

When

When a Man is Outlawed he is disabled to sue, or to take the benefit of the Law as other the Kings Subjects, so the word *Utlagatus* implyes, *quasi extra Legem positus*, that is, put out of the Law: So that while he stands Outlawed, he is utterly disabled to sue an Action; and of this his Disability all Men may take Advantage whom he sues, by pleading the Outlawry against him; which Plea shall stop his Proceedings, till he hath reversed it, and then he is *rectus in Curia*.

If an Executor or Administrator sueth any Action, a Plea of Outlawry to the Plaintiff shall not Disable him, because the Suit is in *auter Droit*, that is, in the Right of the Testator, or *Intestate*.

And by the same reason a Major and Commonalty shall maintain their Action, though the Major be Outlawed.

Note, if a man be Outlawed in *Chester*, *Durham*, or *Lancaster*, which are Counties Palatine, to plead this, shall not Disable the Plaintiff in any Court in *Westminster*.

Upon the making and suing forth of the Original Writ, if the Debt or Damages therein specified, do exceed forty pounds, then there is a certain Fine due for the same, to be paid to the King.

Imprimis, From 40 pounds, to a hundred marks, pays 6 *s.* 8 *d.*

From a hundred marks, to a hundred pounds, pays 10 *s.* 0 *d.*

From a hundred pounds, to two hundred marks, pays 13 *s.* 4 *d.*

From a hundred thirty three pounds six shillings and eight pence, to a hundred sixty six pounds thirteen shillings and four pence, pays 16 *s.* 4 *d.*

From a hundred sixty six pounds thirteen shillings & four pence, to two hundred pounds, pays 20 *s.* 0 *d.*

And so consequently, for every hundred marks more,

more, pays 6 s. 8 d.

And for every hundred pounds more, pays 10 s. 0 d.

If you begin in *Easter* Term, you may procure your *Capias* and *Alias Capias*, returnable in *Trinity* Term, and in *Trinity* Term sue forth your *Plures Capias*, *Exigent* and *Proclamation*; If in *Michaelmas* Term, you may sue forth the Original *Capias*, and *Alias Capias* returnable the same Term; and a *Plures Capias* returnable in *Hillary* Term then next following; and in the same Term procure your *Exigent* and *Proclamation*.

Note, That if you lay your Action in *London*, the Defendent will be the sooner outlawed, in respect of the *Hustings*, being oftner there than County days in the Country.

If the Plaintiff have sued out his Original in *London*, and the Defendent live elsewhere, and that he would have him more speedily arrested than by way of Outlawry upon the return (of the parties not being found, *&c.*) by the Sheriff, he may have a *Testatum* into the County where he liveth, to arrest him there; the Fee of which Writ is 12 *d.* to the *Philizer*.

All the Writs before mentioned, must be filed with the *Custos Brevium*, either by your self, or the *Philizer*, or else, there will be Errour in the Proceedings.

The *Plures Capias* being orderly sued forth and returned, must be delivered to the *Exigenter* of the County where the Action is laid, and he will make an Exigent and Proclamation thereupon.

The *Proclamation* must be delivered to the Under-Sheriff of the County, where the Defendent dwelleth, to be executed according to the Statute, and according to the Tenor and Form of the said Writ.

Three

Three Proclamations ſhall be made in every Action perſonal, wherein any Writ of *Exigent* ſhall be awarded by the Stat. 31 *Eliz. cap.* 3. *viz.* One in the *County Court*; one at *Quarter Seſſions*; and one a Month before the *Quint. exact.* at the Church-door where the party lives.

And before this Statute, by the Stat. of 4 *Hen.* 8 4. and 6 *Hen.* 8. 4. Proclamations were awarded, where the party did not live in the ſame County where the Action was laid.

The charges of a Suit to the Outlawry in debt for 100 *l.* are as followeth.

Doe against *Roe* } *Eaſter* Term, 1651.

	l.	*s.*	*d.*	
For the Fine to the King	0	10	0	
For the Original, *Poſt diem* & Entry,	0	1	5	*s. d.*
For the *Capias*, Seal, and *Poſt diem*,	0	1	9	17. 11.
For the *Alias Capias*, Seal, & *Poſt d.*	0	1	5	
For the Attorneys Fee,	0	3	4	

6 *d.* muſt be paid for the King's duty, upon ſealing every Writ.

Trinity following.

	l.	*s.*	*d.*
For the *Plures Capias*, Seal and *Poſt diem*,	0	1	5
For the Warrant of Attorney,	0	0	4
For the Exigent and Seal	0	1	7
For the return thereof,	0	1	0
For the Attorneys Fee,	0	3	4
For the Proclamation and Seal,	0	1	1

The Return of the Exigent is 4 *d.* a Name, and the Return of the Proclamation is 12 *d.* this laſt *per Stat.* of 31 *Eliz. cap.* 3.

The *Exigenter* hath 6 *d.* for the Proclamation, *per Stat.* 6 *H.* 8. *cap.* 4.

If the *Exigent* be againſt ſeveral Defendents living in

in ſeveral Counties, ſeveral Proclamations muſt go to the Sheriff of the ſeveral Counties, which will increaſe the charge: And further take notice, there muſt be of neceſſity five County-days, between the *Teſte* and the *Return* of the *Exigent*, or elſe you muſt be neceſſitated to ſue forth another Writ, called an *Allocatus*, from the ſaid *Exigenter*, to be delivered to the ſaid Under-ſheriff to the great hinderance and charge of the Client; and your *Allocatus* muſt bear Teſte with the Return of your former *Exigent*, and be returnable the next Return, after the fifth County-day, and your exigent and Proclamation muſt have one and the ſame Teſte and Return.

You muſt carefully examine all the aforeſaid Proceſſes, that there be no difference or variance either in the Sums, Names, or Additions, from your Original Writ, that ſo they may each warrant the other.

The ſame Term that you ſue forth your Exigent and Proclamation, you muſt file a Warrant of Attorney, for the Plaintiff, with the Clerk of the Warrants; in Failer whereof, you commit manifeſt Error in the proſecution of your Cauſe, to the great hinderance and hurt of your Client, and danger of your ſelf, by incurring the Forfeiture of ten Pounds, by a Statute made in that behalf.

The Form of a Warrant in Debt is as follows, and muſt be ingroſſed in Parchment.

London ſſ. A. B. *Ponit. loco ſuo* C. D. *Attornatum ſuum verſus* F. *nuper de* London *Gen. alias dictus* T. F. *de* S. *in Com.* Glouc. *Gent. Deplacit. Debit.*

If in Treſpaſs.

Dorſet ſſ. G. W. *Ponit. loco ſuo* T. G. *verſus* J. L. *de* B. *in Com. præd. Gen. de placito tranſgreſs.*

If in Caſe, ſay, *De placito tranſgreſ. ſuper caſum.*

And the like in other Actions.

The Exigent and Proclamation being returned,

you

you must then file the Proclamation with the *Custos Brevium*; and if you file the same, or any other Writ there before the Return be past, or upon the Return-day, then you must pay nothing for filing the same; otherwise every Writ pays 4 *d.*

Well-experienced Practicers save many of their *Post-diems*, by having their Writs made ready in an early manner.

In case of not filing your Writ or Writs, in or of the Term they are returnable, you pay when you file them with the *Custos Brevium*, for the *Post Terminum* 10 *d.* for every Writ, every Term the same is unfiled, except Exigents, for which you pay only one *Post Terminum.*

It is very unsafe, in relation both to your self and Client, to keep your Writs unfiled, (the filing of them being the substantial warranty for the Proceedings had upon them) lest a Caveat be obtained from some of the Judges in that behalf, which is called *Ne recipiatur.*

The Exigent being returned outlawed by the Sheriff of the City or County, and you being willing to procure Process of Outlawry against the Defendent to arrest him upon the same, you must then carry the Exigent so returned to the *Clerk* of the *Outlawries* for the time being, and he will make you a Writ or Writs, into any County you shall desire him, where you can discover the party to be, or any estate of his, either in Lands or Goods, yea into several Counties at one time; because those Writs are as well on the behalf of the KING, as for the Plaintiff.

There be two several Writs of *Capias Utlagat.* the one called a General *Capias Utlagatum*, being for apprehending the Body of the Defendent: The other Especial, being against his Body, Lands, and Goods.

You having now the Exigent in your hands, ready

to

to file, I thought fit to let you know the accuſtomed Fees for ſuing the Outlawry out, & Proceſs thereon.

The Fees of the Capias Utlagat.

THe filing of the Exigent with the Clerk of the Outlawries in the ſame Term it is returnable, pays 1 *d.*

If it be with a *Poſt Terminum*, pays 20 *d.*

The General *Capias Utlagat.* pays 10 *d.*

The Special, pays 2 *s.* 4 *d.*

The Seal of either, beſides the King's duty pays 1 *d.*

The Fee of the Attorney ſuing it forth, 3 *s.* 4 *d.*

Several ways there are to diſcharge and avoid the ſame as occaſion ſerves, whether the Party be taken, or otherwiſe.

The firſt and moſt uſual way is to reverſe it by *Errour*, found in the return of the Exigent, which may be committed many ways, and is not unfrequent, either by miſtaking the *County-days*, in *not allowing ſufficient time* between any of them, or *in miſnaming of the perſon*, or *omitting*, or *miſtaking of the Sheriffs name* to the ſame Writ or Return; or by words which will bear no ſignification, or otherwiſe, as Experience and Practice will better inſtruct you. And ſecondly by any *Errour* to be found in the Return of the Proclamation, which may be committed many ways, as aforeſaid.

Likewiſe for want of filing the Proclamation with the *Cuſtos Brevium*, by 31 *Eliz.* 3. as alſo for want either of the Return, or a due Return or Miſ-entry, or Miſtakes, either in the Original *Capias*, *Alias*, and *Plures*, afore-recited.

For all which, there muſt be diligent ſearch with the *Cuſtos Brevium*, or in the other Offices where the Proceedings have been.

Upon the finding of any ſufficient *Errour*, either in thoſe,

thoſe, or any other the Proceedings: Then the File of Writs, in which the ſaid matter of *Errour in Writ* is filed, muſt be brought by the *Cuſtos Brevium* into the open Court, there to be ſeen and peruſed by one of the Judges, and the Errours to be allowed, or diſallowed, according to his diſcretion and judgment.

Upon Reverſal of an Outlawry, for want of Proclamation in all Caſes, or for any other default, if the Debt or Dammage amount to 20 *l.* or above, there muſt be Special Bail entred by the Defendent, with Sureties to anſwer to the Plaintiffs Suit, and pay the Debt and Damage recovered, or yield his Body to Priſon, if the Defendent ſhall be condemned in the Action; which Bail muſt be taken out into the Remembrance in the ſame Prothonotaries Office, where the ſame is reverſed. And then if the Party Outlawed be taken, and arreſted, or fear to be ſo, upon notice of an Exigent againſt him, he may have a Writ of *Superſedeas* directed to the Sheriff of the County where he is, or feareth to be taken for his diſcharge, which Writ is to be made and ſigned in the ſame Prothonotaries Office where the Outlawry was reverſed. f. 31.

The Outlawry thus reverſed, the Defendent is bound by his Attorney to appear, and to accept of a Declaration at any time within two Terms then next following after the ſaid Reverſal, and then to anſwer according to courſe of Law.

Upon the *Reverſal* of every Outlawry, the Attorney ought to have a Note or Certificate thereof from the Prothonotary, to the Clerk of the Outlawries, that no further Proceſs may be made againſt the Defendent upon the ſame, and to ſee the Outlawry-Book diſcharged, for which he muſt pay 2 *s.* 8 *d.*

The *Fees of the Reverſals*, according to the occaſions, are uncertain, but the uſual and accuſtomed Fees follow.

For ſearch and *Copy of the Outlawry*, 8 *d.*

For ſearch with the *Cuſtos Brevium*, for every particular Term you need to uſe, 5 *d.*

For *carrying the Bundle* of Writs to the Hall, 2 *s.* 9 *d.*

For putting in the *Bayl*, 6 *s.* 4 *d.*

To the *Box*, 1 *s.*

To the Prothonotary for *entring the Reverſal*, upon inſufficiency of the Return, 8 *s.*

For the *Judges Fee*, 4 *s.*

To the *Clerk of the Outlawries*, for diſcharging the Book, 3 *s.* 6 *d.*

To the *Clerk* for entring the *Reverſal*, 3 *s.* 4 *d.*

For the *Superſedeas*, 2 *s.* 7 *d.*

For the allowing thereof with the Sheriff, 2 *s.* 4 *d.*

This is by the Statute of 1 *Hen.* 5. cap. 5.

And the Addition of the Eſtate, Degree, or Myſtery, ought to be by force of that Act, as the Defendent was the day of the Writ purchaſed, 2 *Inſt.* 670.

An *Outlawry* alſo may be reverſed, although there be no Errour in return or Entries of the Exigent or Proclamation: and although the Proclamation be filed with the *Cuſtos Brevium*, as namely, if that the ſame Proclamation were not awarded according to the form and effect of the Statute in that caſe provided, into the County, and the Defendent named of the Pariſh, where he had been reſident: See *Dyer* 213, 214. a good caſe hereupon *infra annum & diem*, when next before the ſame Suit was begun, and commenced, or that the Defendent be miſ-named therein, in his *Surname*, *Degree*, or *Myſtery*. And this Reverſal is to be done by way of a Plea, drawn by a Clerk to that purpoſe; for which you ſhall find Precedents in the Book of Entries, to which Pleas the *Attorney General*'s hand muſt be procured; but this way, as being both very troubleſome and chargeable, is much out of uſe.

There

There is another way of Reverſing an Outlawry by Writ of Errour; if the Defendent his Body or Goods be taken upon the *Capias Utlagatum*, in the Vacation time then his Attorney is to go to the Clerk of the Errours, and if it be an Action of Debt, and above 20 *l.* ſpecial Bail muſt be put in, or the Attorney muſt undertake ſo to do, which being done the Clerk of the Errors will make out a *Superſedeas* to the Sheriff for the Defendent's diſcharge, which being delivered to the Sheriff, he is immediately to diſcharge both Body and Goods, if both are taken; and if they are not taken, he is to forbear to execute the Writ. But if a man be Outlawed after Judgement, then this manner of Reverſal will not be allowed, for an Outlawry after Judgment cannot be reverſed until the Plaintiff hath acknowledged Satisfaction upon Record, or the Defendent hath paid the Money into Court.

A woman cannot properly be ſaid to be Outlawed *Utlagat.* or *extra Legem poſita*, but *Waviata*, that is waved, left out, or not regarded, becauſe women are not ſworn to the Law: The Writ of Outlawry of a woman is called *Waviaria mulieris*, a woman outlawed is a waive, and therefore the words in the Exigent are *Quouſque ſecundum Legem & Conſuetudinem Regni noſtri Angliæ wavietur*, and not *utlagetur*, as it is againſt a Man.

An Outlawry may be alſo reverſed by the *Kings General Pardon*, which is uſually granted at every Parliament, if ſo be the Defendent were outlawed before the day thereby limited, or by a ſpecial Pardon, which muſt be done by way of *Plea*, and *Scire Facias*, directed to the Sheriff of the ſame County, wherein the Action was firſt laid: And if the Sheriff do return a *Scire Feci* upon the ſaid *Scire Facias*, then you ſhall need but one Writ of *Scire Facias*; if not,

then you must have two returned with *nihil*, &c. in this manner:

Infrà nominatus A. C. *Defend. nihil habet in Balliva mea per quod ei scire facere possum neque est invent. in eâdem.*

D. L. *Mil. Vic.*

These *Scire Facias*'s are to be drawn by the Prothonotarie's Clerk, and then entred into a Remembrance in the same office, and a *Supersedeas* made, and a Certificate also made as above, from the Prothonotary to the Clerk of the Outlawries, that from thenceforth no further Process may be made against the Defendent, and also entred upon Record.

And note in this Case also, the Defendent must by his Attorney appear, and answer the Plaintiff in his Action, but no Bail need be put in.

The Fees thereof.

For the Copy of the *Exigent*,	8 *d.*
The two *Scire Facias* and Seals,	5 *s* 2 *d.*
The Returns thereof,	2 *s.*
The filing of them,	8 *d.*
The taking out of the Remembrance,	1 *s.*
The Copies,	3 *s.* 4 *d.*
The Prothonotary,	5 *s.* 4 *d.*
The *Supersedeas*, and allowing thereof,	4 *s.* 1 *d.*
The Certificate,	1 *s.*
The Clerk of the Outlawries,	2 *s.* 8 *d.*
The Attorneys Fee,	3 *s.* 4 *d.*

An Outlawry also may be reversed by the Writ of Errour, upon Errour in the Proceedings, as the want of the Warrant of Attorney, the not filing of the Original, *Capias*, *Alias*, or *Plures*, and then your course therein follows.

In the first place, you are to have a Copy of the *Exigent*, or *Capias Utlagat.* which is to be carried to the

the *Curſitor* of the County where the Action lies, and where the Defendent is returned Outlawed to have a Writ of Errour made thereupon, which writ muſt be brought under Seal to the Lord Chief Juſtice of the *Common-Pleas*, or his *Clerk of the Errors* for the time being, with the Copy of the Outlawry, and the manner and charges of reverſal in the Vacation; & thereupon the Clerk of the Errors of the *Common-Pleas* makes a *Superſedeas* to the Sheriff of the County, where the Defendent either is, or fears to be arreſted for his diſcharge, and from him procure a Certificate to the *Clerk of the Outlawries*, (as formerly) the charge of the *Superſedeas* is 33*s.* 4*d.* beſides the ſearch and Copy of the Outlawry: And in this caſe, the Defendent by his Attorney muſt appear upon a new Original ſued out by the Plaintiff within two Terms: And this is the moſt uſual and ready way (though moſt chargeable) for diſcharging of an Outlawry (eſpecially in the *Vacation*) if the Defendent be either under arreſt, or fear to be arreſted; but Bail muſt be put in, if the Debt or Damage amount to 20*l.* as in the like Caſes before recited.

It's requiſite in this caſe, the Attorney ſhould take Money of the Defendent for the Declaration, and his Fee againſt the next Term, at the time of the delivery of the *Superſedeas*, (eſpecially if the Defendent be not well known unto him) and a Warrant under his hand to appear, plead or confeſs the Action; for many times the Attorney is put to a great charge and trouble to find out his Client.

Theſe are the general and particular Inſtructions and Directions to ſue to the Outlawry, and to arreſt thereupon, and how to reverſe the ſame both in the behalf of the Plaintiff and Defendent; beſides which, there are other ways of ſuing by *mean Proceſs*, when they proceed no further than to the taking out of an

Original, and then making an arreſt upon the *Capias*; or in caſe the party cannot be taken before the return of the ſaid *Capias*, then you may take out a *Capias* by continuance, which coſts you 10 *d.* to the *Philizer*, *viz.* 6 *d.* the Writ, and 4 *d.* the *poſt diem*, beſides 7 *d.* for the Seal, and the King's duty 6 *d.*

And having now declared at large the ſeveral Proceedings in Actions of Debt, in order to *Outlawry*, or otherwiſe; and likewiſe the *Reverſal* of ſuch Outlawries, whereby the Defendent comes to appear, it now reſts we ſhould ſhew how they may declare, and in what manner thoſe Declarations muſt be: But before we proceed ſo far, it will not be amiſs to inſert ſome few Rules and Obſervations, as a Guide for the Attorney, both in the taking of Inſtructions, and drawing his ſeveral Declarations in other perſonal Actions, as follow.

IN Actions of Debt; either *upon Specialty*, as Bond or Bill, or for *Rent Arrear* upon a Demiſe by Indentures, or otherwiſe, upon an *Action of Covenant*, you muſt have recourſe to the ſeveral Writings, by which you warrant your ſaid Actions, and the Circumſtance of time, either for the date of the ſaid Writings, the place, the quantity of what Rent arrear, for what time, when commencing and ending, and what particular Covenant; (if but one) in an Action of Covenant, you intend to inſiſt on, for the laying of the breach aright; and likewiſe you muſt inform your ſelf how your Client came to be intituled to the Debt, whether as *Obligee*, or otherwiſe, as *Executor*, or *Adminiſtrator* of the *Obligee*: And if for arrear of Rent whether the party came to it by *mean aſſignment or reverſion*, in which caſes you are to inform your ſelf of the *Attornment*: In caſe of a Leaſe for years, the reverſion for years will paſs without

an

an Attornment of the Tenant, and for what time the Rent is arrear, and look what right the immediate Leſſor or Leſſees have, the ſame is in their Aſſigns.

Upon any ſpecialty, if Money be due, an Action of Debt only lyes.

If a Man marry a Woman in Debt, he is lyable to pay her Debt during the Coverture, but after her death he is not, unleſs there be a Judgment againſt them both during the Coverture, if there be, he muſt ſatisfie that Judgment. 9. l. 5. f. 16

Things in action cannot be aſſigned, as the Aſſignee ſhall bring his Action in his *own name*, unleſs in caſe of an Aſſignee of a Bankrupt, or the like.

If Rent grow due by *Leaſe parol* from year to year, which is ſo called, in reſpect there is nothing under Hand and Seal, but barely by word of mouth, to ſignifie the Demiſe, you muſt know the time of the Demiſe, aſcertain the thing demiſed, the Term, the Rent and time of payment of it: The time of the Leſſees Entry, and what Rent is arrear by the Defendent.

If in Debt upon Award.

YOu are to inform your ſelves of the Arbitrators names, the time of the Award made, and what was awarded; and if you can get the Award it ſelf, it is far better.

Note, that if any under the age of 21 years, either in this or any other Action, commence Suit, he muſt come in his proper perſon to be admitted by *prochein Amy*, which coſts 2 *s.* the admittance; otherwiſe if the Defendent take notice of his *Nonage*, and that he declares not by *prochein Amy*, the Defendent may may plead it in Bar to his Action.

But if the Defendent take no advantage of it, it is holpen after a Verdict by the Statute of *Jeofailes*;

but where a Chancery Clerk ſues by priviledge, and obtains a Verdict at Common-Law, this is not holpen by Statute, being *caſus omiſſus*, as it was adjudged in *Peytons* caſe, in the Court of Common-Pleas.

An Infant is lyable to pay for his Meat, Drink, Cloaths, Phyſick, Teaching, *&c.* and cannot plead under age to any of theſe: but if he ſhall bind himſelf by Bond for the payment of any of theſe, he may plead *infra ætatem* to that Bond.

And now take ſome few Inſtructions in other Actions, as Treſpaſs upon *Aſſault* and *Battery*, *falſe Impriſonment*, &c.

In the firſt place, take notice of the time, or any time after the Treſpaſs done, before the Teſte of your Original of the Treſpaſs by Aſſault and Impriſonment, and the place where (although I think neither of them Local) together with the time, the party remaineth detained or impriſoned, and what it coſts him by way of Fine or otherwiſe, to be releaſed.

And note, for the Aſſault of the Wife, Children, or Servant, the Father and Maſter as well as the Servant, may bring an Action, for the loſs or hinderance he receives thereby.

He cannot bring an Action for beating of the Child, as his Child, but only *per quod ſervitium amiſit.*

For Treſpaſs either in Cloſe or Houſes, or chaſing of Cattel; or Fiſhing, where another man hath right, as follows: And firſt,

For breaking your Cloſe, *qu.* the manner of declaring and pleading in Treſpaſs now, and how long the Treſpaſs continued, and what Corn was conſumed and eaten up, or trodden down with the feet, and what Graſs, and of what value. If there be more than one Village in the Pariſh, then you muſt ſay, *apud Parochiam de* S. but if the Treſpaſs were actually

actually committed in one Village only, then you may lay the Action in that Village; or elſe you may ſay, *apud Parochiam de* S. in which the Village is. *Pleas, Kings-Bench.*

An Action of Treſpaſs may be brought for breaking the Cloſe, without adding any manner of other Treſpaſs, this is a common *Clauſum fregit.*

Sometimes it is brought *quare Domum & Clauſum fregit*, for breaking both Houſe and Cloſe; and ſometimes eſpecially in *London*, *quare Domum fregit*, for breaking of the Houſe only.

You may lay an Action of Treſpaſs for ſeveral Treſpaſſes at ſeveral days, or one Treſpaſs with a *Continuando*, that is, continuing of it for ſome certain days, and weeks, from the time laid in the Declaration.

If in Treſpaſs for chaſing of Cattel, you muſt lay the time and place of chaſing, worrying, and beating your Cattel, what Cattel, and how many they were, and what you were dampnified by it either in Ewes caſting their Lambs, or being torn with Dogs; or Kine in loſing their Milk, caſting their Calves, or Mares in the loſs of their Colts, and the like.

An Action of Treſpaſs alſo lyes againſt one, for the reſcuing of his own Cattel out of your hands, in caſe you are driving them to the Pound, for Treſpaſs or otherwiſe, or in caſe they break the Pound where you had impounded them, and drive them away; in both which caſes, you muſt ſhew what Right you had to take them, either as Damage-Feaſant, or that you did diſtrain them for Rent or Services Arrear.

Note this diverſity upon tendering of amends, or of Rents in caſes of diſtreſs.

1. *Tender* upon the Land before the diſtreſs makes the diſtreſs vitious, *Co. lib.* 8. 146, 147.

2. *Tender* after the diſtreſs, and before the impounding

pounding makes the deteiner, not the taking vitious, *Ibid.*

3. *Tender* after the impounding, neither makes the one nor the other vitious.

If your Treſpaſs be for taking away of Goods or Chattels out of your ground or houſe (albeit Money) and ſuch things as are commonly taken out of your houſe, they are to be named particularly, and their value; if Money in a Bag, the particular Sum.

The Writ *hæred. abduct.* lyes for the Guardian in Socage, 91.

Ejectment of ward lyes where the Lord is ouſted out of the Land, and not of the Ward; *Raviſhment de Ward*, where he is ouſted out of the Ward, and not of the Land; and *Droit de Guard*, where he is ouſted out of both, *Vid.* N. B. 95.

If by *Socage Tenure* the Land is holden, then the next of Kindred (to whom the Lands cannot deſcend) hath that like Action for his Ward, wherein he muſt ſhew what he dyed in the Socage-Tenure, and of whoſe Mannour it was holden, together with the time the Plaintiff was ſeized of him, and the time, manner, and place of his taking away.

In an Action of Treſpaſs, for ſpoiling or turning your *Water-courſe*, you firſt ſhew how he held the *Water-courſe*, from, where, and whither the *Water-courſe* came, and that it had uſed ſo to come time out of mind; then what benefit it did the Plaintiff, as in making his grounds fertile, and for watering his Cattel; then how the Defendent did ſtop that Courſe, and with what, and the time, by reaſon whereof the Plaintiff hath loſt the benefit of it for ſuch a time; or if the ground be overflowed by the like courſe, then ſhew how the Defendent, having ſuch a *Water-courſe* or Mills, lying near the Plaintiffs ground, did open his Floud-gate, and ſtopped the *Water-courſe*, and

and cauſed it to overflow the Banks, and drown the Lands.

In Action of Account take theſe enſuing.

THere are but three kinds of Writs of Account, firſt, as Guardian, 2. as Bayliff, 3. as Receiver, *Co. Lit.* 172.

2. If it were not before Auditos, then the proper Action is an *Action upon the Caſe*, upon an *inſimul computaſſet*.

3. See 2 *Inſtit.* 144. and 380. Excellent Inſtructions about this Account before Auditors.

If an Action be brought for *Arrearages of Account*, as where divers Reckonings are between two perſons, and they account together, and upon that Account, the one is found indebted to the other; then know the time when the parties accounts were, and before whom, if they had any Auditors; and what the ſame was, he was to account for, and the time when it was appointed to be paid by the Auditors.

The Proceſs in account is *ſum. pow.* and *diſtreſs*, upon *Nihil* returned upon any of them, Proceſs of Outlawry, *per Stat. W.* 2. cap. 11. but diſtreſs in Suit was at the Common-Law, 2 *Inſtit.* 143, 144.

If you charge any as Receiver for Moneys delivered, name the time when, and the place where, and the perſon that delivered it, and the Sum that was delivered; if he received it for the Rent of any thing, it is beſt to name the thing for what it was, *vid. Ra. Entr.* 19 *Reg.* 135, 136.

If you charge him as a Bayliff of Lands and Goods, ſhew from what time he hath been ſo of the things under his charge, and of all things he received; and how long ſince he was Bayliff, *Ra. entr.* 17.

If you charge him as Bayliff for any thing he hath ſold for you, recite the thing to be accounted for.

ff. You

ſſ. You may charge him as joynt Occupyer, *Ra. entr.* 18, 19. *Reg.* 135.

Detinue.

WHen one delivers Goods or Chattels to another to keep, and he will not deliver them again upon demand, a Writ of *Detinue* lyes againſt him, or *Trover* after demand.

F. N. B. 138.

The Proceſs *per Summons, attachment and diſtring.* F. N. B. 139. *a.* and upon *Nihil* returned by *Capias.*

If you would bring an *Action of Detinue* for any thing that you have bought, and cannot have, ſhew the time when you bought it, and what you paid, and the time for the delivery of it.

Detinue ought always to be of a thing Certain, as for a Horſe, a Cow, or Money in a bag ſealed, or Cheſt locked, or ſuch a certain thing, becauſe the Plaintiff ſhall recover the thing detained in ſpecie.

If you have delivered any thing to any man, and cannot have it again, you may have the like Action, knowing the value of the thing delivered, and to what uſe you did deliver it, and what time was appointed for the re-delivery of it, in caſe it be for Writings, either upon the delivery, or that it came to the Defendents hands by chance, know the date and the effect of the Writing, the time when the Plaintiff was poſſeſſed of it, and the time when the Defendent had it.

Detinue for Charters, that concern Free-hold lyes in *Com. Banc.* and if it be brought in any other Court, the Defendent may ſue *prohibition*, F. N. B. 238. C.

To an Action of Detinue the Defendent may plead *quod non detinet, & de hoc ponit ſe ſuper Patriam* &c.

In

In Actions of the Case take these ensuing.

FIrst, *for Trover*, which is for recovery of damages, for Goods that come to any mans hands by chance, or not in a warrantable way, know the nature of the Goods, the value of them, the time and place when and where the Plaintiff was possessed of them, and how they came to the Defendents hands, and the Conversion.

In an *Action of the Case for Words*, if the Plaintiff have born any Office of Credit, it would do well to recite it in the Declaration, and know the time and place of speaking the words either to the Plaintiff, or of the Plaintiff, together with what other Circumstances may make to aggravate the words spoken by the Defendent.

In an *Action of the Case*, where Felony is laid to ones charge, and the party carried before a Justice of Peace, and so bound over to the Assizes; be sure in this case, to take notice of the time when, and the place where he laid the Felony to him, and for what, and the Constables name that detained him, and the Justices name before whom he was brought, and the bailing or committing of him till the Assizes, the day of the Assizes held, and before whom; the Copy of his Indictment, and his acquittal thereupon.

Be sure that it be a *malicious* prosecution, and also *false*, and proved *false & malitious*, otherwise the Action lies not.

Upon an Escape upon a mean Process.

IF the Bayliff have arrested the party you are to sue, upon mean process, and either for Favour or Bribes release him afterwards, so that you lose thereby the benefit of your Arrest.

First know what cause your Client had against the person

perſon ſo arreſted, and for how much Money, and then ſet forth, that for the recovery thereof, he took out ſuch a Writ returnable ſuch a time, directed to ſuch a Sheriff. Whereupon a Warrant was made, and delivered to the Bailiff, by vertue whereof he arreſted the party, and ſuch a day releaſed him.

If the Sheriff return *non eſt inventus*, whereas the Plaintiff can prove, that the Defendent was in the Sheriffs company after he had Execution againſt him, or that any of his Bayliffs were in the Defendents company, having a Warrant againſt him for his Arreſt upon the Execution; in this caſe the Plaintiff may move the Court to amerce the Sheriff for his falſe return, or he may bring his Action of Debt againſt the Sheriff upon an Eſcape.

When you buy any thing upon warranty, whether it be living Cattel, or any Chattels or Goods that are warranted to be ſound, uſeful, and good, or that ſhould contain ſuch a number, either of loads, pounds weight, or meaſure; and it holdeth not out ſo, an Action lyes, in which caſe you muſt take notice of the quantity and quality of the thing when ſold, and for how much, the time and place, and that the Defendent did warrant it to be good, *&c.*

Note, that there muſt be an expreſs Warranty, elſe the Action will not lye.

An Action likewiſe lyes againſt a *Farrier*, who for a Sum of Money undertakes a Cure, and wholly neglects it, or uſes contrary or poyſonous Medicines, whereby your Horſe dyeth, or is worſted.

And likewiſe againſt a *Smith* that pricks your Horſe in ſhooing of him, whereby he becomes lame and unuſeful, and you looſe the benefit of his Service.

And where a *Taylor* taketh a quantity of Cloath or Stuff to make a Suit, and cutteth it ſo ſcanty, as that

that it will not be for the parties uſe.

And likewiſe for many other Frauds and Deceits, both in *Shop-keepers*, *Artificers*, and men almoſt of all Myſteries and Profeſſions.

Having thus given ſome brief Directions what to take by way of Inſtruction and Information for the Attorney, in behalf of his Client, in order to drawing a Declaration, I ſhall now proceed to the ſaid Declaration, Iſſue, and Judgment, after appearance made by Superſedeas *to the* Exigent, *or upon any other appearance upon Arreſt had by vertue of mean* Proceſs.

THe Defendent appearing, by putting in ſpecial Bail to the Action, or otherwiſe upon the *Capia*, *Alias*, or *Plures*, in the *Philizer*'s Office, where the ſame was ſued forth, or by *Superſedeas* to the *Exigent*, brought and allowed with the Sheriff, you muſt inform your ſelf what Attorney doth appear for the Defendent, that done, you muſt declare either upon Bond, Bill, Indenture, Treſpaſs, or otherwiſe, as your Caſe requires, always obſerving this Rule: That there be no difference between the Additions in the Writs or Sums therein contained, and your Declarations, for they muſt litterally agree, the one being a Warrant for the other; for if there be Variance, and the Defendent take notice of it, he may plead that variance in abatement to the Writ.

If the Defendent upon the Return of the Exigent do appear thereunto, he ſhall not be compelled to put in ſpecial Bail be the Debt never ſo great; whereas if he had been arreſted upon a mean Proceſs, he ſhould have been compelled unto it: Or if he be outlawed, he muſt reverſe it, and put in ſpecial Bail, if the Debt be above twenty pounds, before he can reverſe it.

When

When the Defendent appears unto an Exigent by Superſedeas, *quia improvidè*, the Plaintiff muſt declare within ſix or eight days after, otherwiſe the Defendent may give him a rule in the Bill of Pleas, in one of the Prothonotaries Offices to declare; and if no Declaration come in within the time limited, the Defendent may Nonſuit the Plaintiff, and get coſts ſigned by the Prothonotary upon a *Non Proſ.* and have Execution for Coſts againſt the Plaintiff, either againſt his Body or Goods.

On the contrary, if the Defendent appear by Superſedeas, and will not take a Declaration, the Plaintiff may have Judgment againſt him by *Nihil dicit*, leaving a Declaration in the Office and entring a Rule to plead.

If the Defendent appears upon the Exigent, or upon the *Habeas Corpus*, *Plur. Capias*, or Diſtreſs, or upon Bail put in upon an *Habeas Corpus*, or upon an Outlawry reverſed, then by the courſe of the Court the Defendent muſt anſwer the firſt Term, becauſe he hath ſtood out ſo many Proceſs: And in ſuch Caſes the Court does not uſe to change the Veſnue.

Note, in caſe of Bail put in, or reverſal of an Outlawry, there muſt be an Attorney preſent to appear, unleſs the Defendent will do it in proper perſon.

And for the drawing of thoſe Declarations, it requires the skill, ſtudy, and experience of an able Clerk of the *Prothonotaries* Office, and ſome helps there are by Books of *Entries*.

Having your Declaration drawn, you muſt enter it upon the Roll of the Court, in one or other of the *Prothonotaries* Office, either by your ſelf, or ſome Clerk of the Office, who muſt ſee it put in the Dogget of that Office, and thereto put the Number-Roll, and ſo enter it in your Dogget-Book, and keep your

Number-

Number-Roll, that ſo you may have recourſe to the Roll afterward, to enter up your Continuances, if the Cauſe continue above one Term before Judgment or Trial had.

Note, This muſt be underſtood in caſe of Continuances before pleading to Iſſue, otherwiſe the Writs are before Verdict, and after Pleading, entred by the Clerk of the Judgments, in caſe of no Writ *per* the H. Officer. *The Original.*

If the Plaintiff do not declare within two Terms after the Outlawry reverſed, the Defendant is not bound to accept the Declaration afterwards; but in ſuch caſe the Defendent cannot *Non proſ.* the Plaintiff, and have Coſts for want of declaring, becauſe the Defendent was not arreſted upon a Common Writ.

All Appearances upon Writs of *Capias* muſt be entred in the *Philizers* Office, whence the *Capias* iſſued; But Appearances upon Attachment of Priviledge, at an Officer, Attorney, or Clerk's Suit, muſt be entred in the Remembrance in the *Prothonotaries* Office, whence it iſſued.

By the courſe of the Court, the Defendants are to anſwer the ſame Term they appear, if the Writs be returnable at the beginning of the Term, eſpecially in *Iſſuable Terms*, which are *Trinity* and *Hillary*; but in other Terms, if the Action be not laid in *London*, the Defendants have for the moſt part *Imparlance*, or time to plead till the next Term.

Note, That this is in caſe the Writ be perfect whereon the Arreſt was made (and was by the new Rules) the Caſe holds, if the Writ be retornable the ſecond or third Return.

If the Defendant appears upon an Arreſt by *Clauſum fregit*, he muſt have an *Imparlance* of Courſe; but if the Writ whereupon he was arreſted be ſpe-

cial, according to the truth of the Action, and returnable the first or second return in any Term, so as a *Vinire facias* may issue forth, there the Defendant ought to answer the first Term in all personal and mixt actions; but in real Actions the Defendant shall have one *Imparlance* of Course.

The reason why they have had *Imparlances* in all Cases in the *Kings Bench* is, because the Defendant being arrested upon a general Writ of *Latitat*, could not know the cause of Action, until the Declaration. And this reason holds in the Common Pleas, where the Defendant is arrested upon a general *Clausum fregit*: But in other special Cases where the very Declaration is in the Writ, and the Defendant might when he is arrested see the Declaration in the Writ, there he ought not to Imparle, but to answer the first Term.

And here take notice, that there be two kinds of *Imparlance*, the one *General*, the other *Special*; after a general Imparlance had, the Defendant cannot plead in abatement to the Writ, Excommunication, or the like, nor any priviledge out of another Court, as a priviledged man.

Note, If no Imparlance appear upon Record, he may plead in abatement.

But after a special Imparlance, many Pleas may be pleaded, which after the general Imparlance cannot be allowed: If a special Imparlance be prayed, you must take for the Entry thereof of the Defendants Attorney, 2 *shill.*

Note, After special Imparlance, one cannot plead to the Jurisdiction of the Court.

If the Attorney for the Defendant, upon receiving a Declaration, do not crave that the Condition of the Bond may be entred with the Imparlance, and do not pay for the same, then he is debarred from pleading

pleading Conditions performed at any time after, without moving the Court, and paying 5 *s.* to the Judges Box.

Rules to anſwer, muſt be entred in ſome of the Remembrances in one of the *Prothonotaries* Office, which is briefly done thus:

Heref. ſſ. *Int.* A. B. *quer. &* L. D. *nuper de* S. *in Com. prædicto* Yeoman, *alias dict.* A. B. *de* L. *in Com.* H. Yeoman, *Defend. de placito debit.*

J. H. *pro quer.* G. L. *pro Defend.*

Which being thus written, you put either in the Margin, or over head your Rule, which is, *Niſi Defend. placitaverit die* Mercurii *prox. poſt Octab. Sanct.* Trinitatis (or ſome other day certain) *intretur Judicium pro quer. per Cur.*

And theſe are entred either by the Secondary of the Office, where the Plaintiffs Attorney enters his Cauſes on the Bill of Pleas, or as before I have ſaid, by the Attorney or Clerk for him, upon the common Remembrance, for which there is 4 *d.* paid, and upon the Expiration of the ſame Rule, no Plea being brought in, you may ſign Judgment with the *Prothonotary* for want of anſwer.

If the Attorney for the Plaintiff do not declare againſt the Defendant upon his appearance within reaſonable time in the Term after the appearance made, then the Attorney for the Defendant may alſo enter a Rule in the Bill of Pleas againſt the Plaintiff to declare, and thereupon cauſe a *Non prof.* to be entred, which muſt be ſigned with the *Prothonotary*, and Coſts given for the unjuſt vexation; for which Coſts he ſhall have Execution againſt the Plaintiff; but if the Plaintiff ſue as Executor or Adminiſtrator, he ſhall pay no Coſts upon any Non-ſuit, unleſs in an *Action upon the Caſe*, upon a promiſe made to him as Executor.

The Imparlance is a time of Leave, or Licence given from one Term to the Term ſucceeding by the Plaintiff to the Defendant, either to plead to his Action brought, or to let it paſs by default; and to that purpoſe, the next Term after the Imparlance had, as aforeſaid, the Attorney for the Plaintiff may call to the Attorney of the Defendant, to anſwer to the Declaration, and if he do not plead in due time, give him Rule to anſwer; which done, and the Rule expired, he may enter Judgment as before is declared by *Nihil dicit*.

Where the Defendant pleads General Iſſues or Pleas, as is moſt uſual, as in an Action of Debt (*nil debet per Patriam, &c.*) or to Debt upon Bond, or Bill penal, or the like; or in Action of the Caſe, the general Iſſue not guilty for Words, if upon Promiſe, that he did not aſſume, &c. And for not guilty likewiſe in Action of Treſpaſs or Battery. In theſe and the like Caſes of Common Pleas or Iſſues, there is no more requiſite, but that the Attorney for the Defendant, do put his hand to the Plaintiffs Attorneys Dogget-Book; and that done, the Plaintiffs Attorney doth draw up the Plea, and make a Copy of the Iſſue, and delivereth it to the Defendants Attorney, who muſt receive it, and pay for entring ſuch his Plea: (*Qu.* the Fees for entring Pleas Common) and for the Book; and then uſually they give warning to a Trial, unleſs they forbear Trial the next Aſſizes.

Per minas.
Per duras.
Non eſt factum.
Conditions performed.

But if the Defendant plead ſpecially, he is to bring it to the Plaintiffs Attorney *under a Serjeants hand*; and if the Plaintiff reply ſpecially, either by traverſe or otherwiſe, the Replication is alſo to be under a Serjeants hand, and he is to give it to the Defendants Attorney.

So

So if the Defendant *demurr* to a Declaration, it is alſo to be brought under a Serjeants hand.

It's moſt general, that the Jury ariſe out of that County, and Town or Pariſh, where the Action is laid for trial, unleſs it be removed by pleading; as where an Action is brought upon a Bond or Bill, and the Action laid in *Herefordſhire*, and the Defendant pleads Conditions performed, for the Money paid at *Stow* in *Glouceſterſhire*, according to the Condition; here the *Venire* ſhall not ariſe in *Hereford*, but in *Stow* in the County of *Glouceſter*.

Note, If the *Venire* chance to ariſe out of three Counties, the *Trial* muſt be at *Bar*, unleſs it be upon two Iſſues.

If an Action upon the Statute of *Hue and Cry* be brought againſt a Hundred for a Robbery done within the Hundred, the *Venire* ſhall not ariſe in that Hundred where the Fact was done (for then they would be Judges in their own cauſe, which is againſt common Reaſon;) but the *Venire* ſhall ariſe in the Hundred next adjoyning; and to this purpoſe, the *Venire* muſt be awarded ſpecially, which is worthy obſervation.

Note, It muſt be by way of *Challenge*.

After the Iſſue joyned, there may be ſeveral cauſes of *Challenge*, as where the Defendant is *of Kindred to the Sheriff*, either *by blood or marriage*, the Plaintiff may pray the *Venire Facias* may be directed to the *Coroners*, and if the Defendant agree thereto, it ſhall be accordingly. This muſt be ſpecially awarded upon the Iſſue Roll; and in the awarding of it, it muſt be ſet down and derived how the Sheriff is of Kindred, and then is the *Venire facias* directed to the *Coroners*, called *A challenge to the Sheriff*.

Challenge to the Array, is to the Jury at the Aſſizes properly, *Venire* in that caſe may be directed to the Sheriff.

You cannot make a *Challenge to the Jury*, till after they are called, and before they are ſworn, for afterwards it comes too late.

If your Trial be by *Niſi prius* at the Aſſizes in the Country, and your Jury appear not full upon the Pannel, the Plaintiffs Council may crave a *Decem tales de circumſtant.* ten of the ſtanders by to fill up the Jury, or a leſs number, according as is requiſite; which *Tales* muſt be mentioned upon return of the *Poſtea*, and the Judgment thereupon on the Iſſue-Roll.

See for this Co. Lit. 156.

Theſe *Tales de Circumſtantibus* be given by the Statute 35 *H.* 8. *Cap.* 6. And the Juſtices may award *Tales* when only one Juror appears, *Dyer* 245. *Co. lib.* 10. 103. *b.*

And upon the Plaintiffs default, after the firſt Term the Defendants Attorney may bring the Cauſe to Trial, by *Venire facias*, by *Proviſo*.

Note, In *Replevin upon Avowry*, the Defendants Attorney may bring the Cauſe to Trial the firſt Term by *Proviſo*.

If at the Trial of any *Niſi prius*, the Witneſſes of the Plaintiff or Defendant will not voluntarily appear, without being ſerved with the Proceſs, to teſtifie the truth of their knowledge, in the matter or cauſe in queſtion, then you may have a *Subpœna ad teſtificand.* for the ſaid Witneſſes out of the Prothonotaries Office, and therewith ſerve them, and compel them to appear, the Fee whereof is 2 *s.* 7 *d.*

You may have a *Subpœna* alſo from the *Clerk of the Aſſizes*, and it hath been adjudged a good *Subpœna* upon the Action grounded *S. Statute* 5 *Eliz.*

When you proceed unto your Trial, you muſt (having entred as before your Declaration, with the Iſſue joyn'd in the *Prothonotaries* Office) make out a *Venire Facias* upon your Iſſue, and get it ſigned with the *Prothonotary*, and having received it, you muſt

get

get it returned by the Sheriff of the County or City where you lay your Action; and upon return thereof, you must also sue forth a *Habeas Corpora*, which is made by a particular Officer of the Court, call'd the *Clerk of the Juries*, and deliver the same to the Sheriff in due time, that so he may warn the Jury, and get the same returned before the Assizes.

Note, That if a Cause be brought to a Trial, and a *Habeas Corpora Juratorum* be delivered to the Sheriff who summons the Jury; and if you, for reasons best known unto your self, defer the Trial until some longer time, and afterwards you think fit to bring it again to Trial, you need not be at charge of a second *Venire facias*, but may take a Copy from the *Custos Brevium* of your first Writ, if you keep it not in your hands, paying him for it 8 *d.* and for the search of it 5 d.

Upon which Copy or old Writ the Clerk of the Juries will make you an *Alias habeas corpora*, or *Plures*, paying for it as in Debt or Trespass, 10 *d.*

And in other Actions, 1 *s.* 6 *d.*

And for the continuance of it every Term, 4 *d.*

Then you must in suing forth your *Nisi prius*, ingross your Record in Parchment, *verbatim*, according to the Copy of the Issue made up, and the Entry of it upon the Roll in the *Prothonotaries* Office, and then examine the same with the *Prothonotary*, if it be upon an Issue joyn'd the same Term, whose hand must be to it, and then carry the same to the *Clerk of the Treasury* for the time being, giving him such Fees for signing and making up the Records, as are hereafter specified.

But if the Issue were entred of a former Time, then you must deliver the Paper-book of the Issue to the *Clerk of the Treasury*, who will examine the same by the Roll, and make up the Record there-

upon; which done, and the ſame ſigned by him or his Deputy, you muſt ſeal the ſame with the * Lord Chief Juſtice of the Court for the time being, who hath a Seal for that purpoſe, and then deliver the Record ſo ſealed, together with the *Habeas Corpor. Jur.* returned by the Sheriff, to the Clerk of the Aſſize for the ſame County, where the matter is to be tried.

* *Note kept by the Clerk of the Treaſury.*

The general Fees in an *Action of Debt, Treſpaſs, &c.* follow, as to making up the Record.

For the *Venire Facias*,	2 *s.* 7 *d.*
For the *Return* thereof,	2 *s.* 4 *d.*
For the *Poſt-diem* thereof,	4 *d.*
For the *Habeas corpora Jurator.* and *Expedition*,	2 *s.*
For *Summoning the Jury*,	12 *s.*
If in *London*, or a Corporation, but	4 *s.* 4 *d.*
For ſigning the Record with the *Clerk of the Treaſury*, if the ſame exceed not 3 ſheets,	2 *s.*
For *every ſheet exceeding*,	4 *d.*
For *examining the Jurat.*	4 *s.*
For *writing the Record*, for every *ſheet*	4 *d.*
For *examining* the ſame by the *Prothonotary*,	1 *s.*
For the *Seal*,	2 *s.* 2 *d.*

Having thus procured your Record of *Niſi prius*, you are to carry it at the time of the Aſſize, and deliver it into the Clerk of the Aſſize, and there pay the Judges Fee, having retained your Council, and your Witneſſes being in readineſs for the Trial of your Cauſe, according to the Iſſue.

The Fees you are to pay at the Aſſizes, are as follow:

For the *Judges Fee* in putting in the Record of *Niſi prius*,	11 *s.* 8 *d.*
To each *Counſellor* you retain, at the leaſt	10 *s.*
For *reading the Record*,	10 *s.*
For the *Marſhals Fees*,	2 *s.*

For

For the *Jury*, eight pence a piece, 8 *s.*
To the *Bayliff that keeps the Jury*, 2 *s.*
For the *Cryer*, 1 *s.*
For the *Oath of every Witneſs*, 4 *d.*
For a *Non-ſuit*,
For a *Tales de Circumſtantibus*,
For a *privy Verdict*,
For a *Warrant of Attorney*, if the Attorney be abſent, 4 *s.*

The Fees do ſomewhat differ by cuſtom in ſeveral Counties: But if the Trial be had before the Lord Chief Juſtice of the Common-Bench in *London*, thoſe are common Fees to be added unto the former.

For the *Green-Cloth*, 1 *s.* 6 *d.*
To the *Bar-keeper*, and *Hall-keeper*, 2 *s.*
To the *Judges Groom*, or Foot-cloth-man, 2 *s.*
To procure the *Record to be read*,
For *Lights*, if the Cauſe be tried by Candle-light.

The Aſſizes ended, your Trial being had, and Verdict paſſed for your Client, at the next Term following, you are to call for the return of the *Poſtea* from the Clerk of the Aſſize, and thereupon bring the ſame to the *Prothonotaries* Office to get coſts aſſeſſed; for which end (if your charges have been extraordinary) you muſt bring a Bill of diſburſements under your hand, otherwiſe not, and thereupon cauſe Judgment to be entred. For the Entry whereof, the general Fees are as follow:

For the *Return of the Poſtea*, 2 *s.*
For *ſigning the Coſts*, 1 *s.*
For *Entring the Judgment*, if the Jury did fully appear, 2 *s.* 4 *d.*
If there were a *Tales*, then more, 2 *s.*
For the *Copy of the Judgment*, 1 *s.* 4 *d.*

Having

Having thus far proceeded, you may now procure Proceſs and Writs of Execution, by *Capias ad Satisfaciendum*, *Fieri Facias*, *Elegit*, or otherwiſe, according to you deſire, and as the nature of your Action brought doth allow or require: Wherein Note, that the * *Capias ad Satisfaciendum*, is the taking of the Body only of the Party in Execution, till he ſatisfie for the Debt and Damages.

* Cap. *lay at Common Law for the Kings Debt, but not at the Suit of the party, unleſs in Treſpaſs. Qu.* When.

† Elegit *is given by the* Stat. W. 2. cap. 18.

† The *Fieri Facias* againſt the Goods only, and the *Elegit* againſt the Moiety, or half of his Lands and Tenements, and all his Goods and Chattels, (his Oxen and Plough-Cattel only excepted) to have and to hold the Goods as his own Goods, and the ſaid Moiety of the Lands, until his Debt and Coſts ſhall be fully ſatisfied and paid. But note this, that after an *Elegit* executed and filed, you can never have any other Execution, it being your own Election.

Note alſo, that if you ſue forth a Writ of *Fieri Facias* againſt the Goods of the Defendent, and by virtue thereof levy part of the Debt, and not the whole, then you may have afterwards a *Capias ad Satisfaciend.* againſt his Body, or an *Elegit* for the reſt: But if you firſt impriſon his Body by virtue of a *Capias ad Satisfaciend.* then you cannot have a *Fieri Facias* againſt the Goods, or an *Elegit*: If you have ſeveral Judgments againſt ſeveral men, for one and the ſame Debt, they being joyntly and ſeverally bound for the ſame, you may have two or three ſeveral Executions againſt them all, until the Debt and Coſts be ſatisfied by one of them, but cannot have the whole of every of them; and if the Defendant be in another County, and not to be found in the ſame County where the Action was laid, then you muſt ſue forth a *Capias ad Satisfaciend.* into the

the ſame County where the Action was laid, and get the Sheriff to return upon it a *Non eſt inventus*, and then ſue forth a *Teſtatum* into the County where he is to be found, and thoſe Executions made immediately after Verdicts, &c. Judgments had upon them are made by the Clerks of the Judgments, in the reſpective *Prothonotaries* Office, who keep the Judgment-Papers, where they are tranſcribed.

We have now ſhewed you the courſe how to proceed to Trial, after Outlawry reverſed on an appearance, in caſe the Defendant plead an iſſuable Plea, or indeed upon any other appearance made upon mean Proceſs: Only take notice of this, that if the Plaintiffs Action be juſt and right, and for good Debts or juſt cauſes of Action; the Attorney for the Defendant ſhall do well to counſel his Client to yield to Judgment, either by way of not being informed, Confeſſion, or otherwiſe, ſo that he procure ſtay of Execution againſt his Client for ſuch time as ſhall be agreed on by both Attorneys, which muſt be carefully looked unto by the Attorney of the Defendant in time, before the Rule be out, and they take Judgment by default: and this he ſhall do by putting his hand to the Plaintiffs Attorney's Dogget-Book, in this manner;

Non ſum informatus ita quod ceſſet Exec. uſque Craſtinum Trin.

Hereſ. ſſ. Bridges *pro* Lacy, Dowdſwel *pro Hunt*, } *Per* Dowdſwel.

After which you draw up the Judgment ſhort in Paper, and carry it to the *Prothonotary*, who is to tax Coſts, and for that you pay him, 3 *s.* 4 *d.* if in Debt upon one ſingle Contract, and then you are to take it out, (the Plaintiffs Name and the Defendants, and the Attorneys for the Plaintiff, in the Judgment-Book) after which you enter it upon ſome Roll of the

Formerly the Puiſny Judge did tax the Coſts.

the Court in the *Prothonotaries* Office, and keep the Number-Roll by you to your Dogget-Book, that ſo upon all occaſions you may have ready recourſe to it; and the Plaintiffs Attorney muſt be careful of keeping together the Copies of all his Judgments, that ſo when he hath occaſion to renew them by *Scire Facias*, he need not be driven to take out new Copies, which are chargeable out of the Treaſury.

And note, that in caſe the Judgment have continued above a year and a day, and no Execution taken out, he muſt be put to renew it by *Scire Facias*; ſo he muſt likewiſe do, in caſe the Plaintiff or Defendant die, unleſs he hath from Term to Term ſued forth Proceſs, and filed it.

And in caſe of any Judgment had in Debt againſt an Executor or Adminiſtrator, you can have but a *Fieri Facias* of the Goods of the Party deceaſed, in the hands of the Executor or Adminiſtrator; but if the Sheriff return upon your *Scire Facias* a *Devaſtavit*, then you ſhall have a *Fieri Facias* of the proper Goods of the Executor or Adminiſtrator; and if the Sheriff return that he hath no Goods, you ſhall have a *Capias* againſt his Body, and after an *Exigent*, and ſo to the Outlawry after Judgment, if you pleaſe, in caſe you find him not eaſily to be arreſted.

Note further, that you may have a *Capias* for the Coſts, and in caſe of *ne unques* Executor pleaded, you may have *Fieri facias de bonis propriis*, if there be no Goods of the Teſtator.

The courſe whereof is thus:

FIrſt then, he muſt have a *Capias ad ſatisfaciendum*, to be made for the Debts and Coſts, if it be in Debt; or after a Judgment had for Treſpaſs for the Damages and Coſts, as in the Judgment, which muſt be made into the ſame County where the Action

Action was laid, and get the ſame returned by the Sheriff, with *Non eſt inventus, &c.* Then he muſt carry the ſame to the *Exigenter* of the ſame County, who will make an *Exigent* thereupon, which muſt be delivered to the Under-Sheriff to be executed and returned accordingly as other *Exigents*.

Note, that in this Caſe there ſhall need no Proclamation at all againſt the Defendant, to give him notice thereof.

The *Exigent* being returned, you may ſue forth the Proceſs of *Outlawry*, from the *Clerk of the Outlawries*, either *general* or *ſpecial*, as in other Actions before ſpecified: Whereupon the Defendant, if he be arreſted, cannot be diſcharged without ſatisfaction to the Plaintiff, and reverſing, or pardon of the *Outlawry*, the Plaintiff may bring an Action of Debt upon the Judgment.

The Fees to the Outlawry after Judgment, are as follow:

	s.	*d.*
For the *Capias ad ſatisfaciendum*,	1	1
For the *Return* thereof,	0	4
For the *Poſt-diem*,	0	4
For the *Exigent*,	1	7
For the *Return* thereof,	0	4
For the *general Capias Utlagatum.*	0	11
For the *ſpecial Capias Utlagatum*,	2	2

Note, that in this Caſe you may have either general or ſpecial *Capias utlagatum*, into as many ſeveral Counties as you will, either in *England* or *Wales*; but obſerve further, that no Proceſs iſſuing or to be made in or out of the *Common Pleas*, can be directed or executed to or by any Under-Sheriff in *Wales*, but only *Elegits*, *Extents*, *Proclamations* upon the mean Proceſs as before, *Capias Utlagatum*, general or ſpecial, or upon Outlawries after Judgment.

If

If the Defendant be outlawed after judgment, if he cannot be arreſted within a year and a day, yet the Plaintiff ſhall not need to renew the Judgment by way of *Scire Facias*; but otherwiſe, in caſe he be not outlawed, he muſt, as I before recited.

Note, if a man be taken upon an Outlawry after Judgment, after the year and day, he is not in Execution for the Party without Prayer, *Co. lib.* 5. 89.

If Judgment be given in the *Common Pleas*, and removed by Writ of Error, and Judgment affirmed within the year, they ſhall award Execution, and the Plaintiff is not put to his *Scire Facias*, *Co. lib.* 5. 88. againſt the Opinion of 14 *H.* 7. 15.

At the Common Law when one had recovered after the year and day, he was put to a new Action upon the Judgment, and the *Scire Facias* is given by the Stat. *W.* 2. *Cap.* 45. But in real Actions a *Scire Facias* did lie at Common Law.

The manner of renewing the Judgment by Scire Facias.

IF the Plaintiff in a Judgment dies, his Executor muſt renew the Judgment by one *Scire Facias*; but otherwiſe it is where the Defendant dies, there muſt be two Writs of *Scire Facias*, unleſs there be *Scire Feci* returned by the Sheriff upon the Writ of *Scire Facias*, for two *Nihils* returned amount to a *Scire Feci*.

First, The Plaintiff muſt ſue forth a *Scire Facias* againſt the Defendant in the County where the Action was laid, directed to the Sheriff, to give notice to the Defendant to appear and ſhew cauſe why the Plaintiff ſhould not have Execution againſt him, for the Debt and Coſts formerly recovered: To which Writ, if the Defendant can ſhew any good cauſe as a Releaſe, Satisfaction, or any other juſt cauſe or ſufficient diſcharge, then he may appear, and plead in Bar his diſcharge. His

His appearance muſt be entred in that *Prothonotaries* Office out of which the *Scire Facias* was made.

If the Defendant, upon return of the ſame *Scire Facias*, do not forthwith appear and plead, the Plaintiff ſhall have preſent Execution againſt him.

But if the Defendant, after the ſaid Judgment obtained, and before ſatisfaction of the ſaid Debt, die, unleſs the Plaintiff procure a *Scire Feci*, *&c.* to be return'd upon the firſt *Scire Facias* againſt the Executor or Adminiſtrator, then the Plaintiff muſt ſue forth a ſecond *Scire Facias* againſt the Executor or Adminiſtrator of the Defendent; and upon their ſecond default the Plaintiff ſhall have preſent Execution againſt them, having, after the return of the ſaid *Scire Facias*, taken it out, and given a Rule in Remembrance in the *Prothonotaries* Office in this manner: *Niſi defendens aliquid allegaverit in retardationem executionis Judicii præd. die Mercurii prox. poſt Clauſum hujus Termini, intretur Judicium per defalt. Per Cur.*

Note, that theſe ſeveral Writs are to be made and ſued together with Execution, in and out of the ſame *Prothonotaries* Office, and where the firſt Judgment was entred. And the ſaid Writs of *Scire Facias*, together with the new Judgment had thereupon, to be entred upon Record in the ſame Office, and the Writs carefully filed with the *Cuſtos Brevium.*

The ſeveral Fees are theſe;

For *ſearch* in the *Dogget* for the Number-Roll,	4 *d.*
For *ſearch* in the *Treaſury*,	4 *d.*
For the *Copy of the Judgment* uſually,	2 *s.*
For the *Clerk* for making the Writ,	8 *d.*
To the *Prothonotary* for ſigning of it,	1 *s.* 4 *d.*
For the *Seal* of it,	7 *d.*
For the *Return* with a *Nihil*,	1 *s.*

For

For the *Return* with a *Scire Feci*, 2 *s.*
For entring the *Judgment* upon default, upon one *Scire Facias*, 2 *s.* 4 *d.*
If upon two *Scire Facias*, 4 *s.*
For the *Copy*, 2 *s.*
For taking the *Writs* into a Remembrance, 1 *s.*
For the *Rule*, 4 *d.*
For a *Warrant of Attorney*, 8 *d.*

Upon these Proceedings duly and truly performed, the Plaintiff may have Execution against the Defendant, by *Capias ad satisfaciendum*, by *Elegit*, or otherwise, at his pleasure (as is before told you in Writs of Execution:) and if the Defendant be dead, then there shall issue against the Executor a *Scire Facias*, to have Execution *de bonis Testatoris*.

The Executor in such case cannot plead *plene administravit* generally.

THus far having proceeded in Debt against the Defendant himself, his Executor or Administrator, either by way of *Scire facias*, or otherwise, we now proceed to Prosecution, to Judgment and Execution upon special Bail; wherein observe these Rules ensuing.

If the Defendant be arrested by mean Process, a *Capias*, *Alias*, or *Plures*, and the Plaintiff holdeth him not sufficient to answer the Debt or Damage contained in the Writ, the same amounting to 20 or upwards: In this case the Plaintiff upon the return of the Writ (by entring a *Ne recipiatur* with the *Philizer*, out of whose Office the *Capias* did issue) may crave special Bail to be put into his action, which the Defendant must put in before the Judge of the Court where the Cause depends, who will accept of such Bail as the validity or weight of the Cause doth require, or in his discretion shall be thought fit.

Bails f. 299. 319. 362.

If the appearance be upon Arrest by the *Capias*, *Alias*, or *Plures*, then the Bail must be taken and entred by the *Philizer* of the same County where the Action was laid, and who made the said Process.

But if the Defendent be arrested in the *Mayors*, *Bayliffs*, or *Sheriffs* Court, of any City or Corporation, and the Defendent by any Writ of Priviledge, or *Habeas Corpus*, do remove the same out of the same Corporation, to be tried at Common-Law above.

Note, upon such Process Bail is requirable, of what nature soever the Action be.

Then the Bail being taken by any Judge of the same Court, must be entred in the same *Prothonotaries* Office, where the said Writ of Priviledge, or *Habeas Corpus* issued and was sued out.

When a Cause is removed out of an Inferiour Court, the Plaintiff or his Attorney in such cause, ought duly to enter their Caveats for good Bail, with all the Justices of this Court; and the Attorney for the Defendent which would remove any such Cause, must give notice to the Plaintiff or his Attorney in the Inferiour Court, of the time when the Bail shall be put in, and of the names of the said Bail, and where they live, and shall make *Affidavit* of such notice; and if the Plaintiff or his Attorney will not attend to take Exception to the Bail, at the time of the taking thereof, nor within fourteen days after, then the said Bail shall be forthwith filed.

And for that Prisoners are many times committed to the Fleet upon *Habeas Corpus*, and the Commitments are not filed with the Prothonotary, and so not recorded, whereby many times Prisoners escape, and no Action lies against the Warden of the Fleet for the same. To prevent this inconvenience, the Attorney that sues forth the *Habeas*

For the *Return* with a *Scire Feci*, 2 *s.*
For entring the *Judgment* upon default, upon one *Scire Facias*, 2 *s.* 4 *d.*
If upon two *Scire Facias*, 4 *s.*
For the *Copy*, 2 *s.*
For taking the *Writs* into a Remembrance, 1 *s.*
For the *Rule*, 4 *d.*
For a *Warrant of Attorney*, 8 *d.*

Upon these Proceedings duly and truly performed, the Plaintiff may have Execution against the Defendant, by *Capias ad satisfaciendum*, by *Elegit*, or otherwise, at his pleasure (as is before told you in Writs of Execution:) and if the Defendant be dead, then there shall issue against the Executor a *Scire Facias*, to have Execution *de bonis Testatoris*.

The Executor in such case cannot plead *plene administravit* generally.

THus far having proceeded in Debt against the Defendant himself, his Executor or Administrator, either by way of *Scire facias*, or otherwise, we now proceed to Prosecution, to Judgment and Execution upon special Bail; wherein observe these Rules ensuing.

If the Defendant be arrested by mean Process, as *Capias*, *Alias*, or *Plures*, and the Plaintiff holdeth him not sufficient to answer the Debt or Damages contained in the Writ, the same amounting to 20 *l.* or upwards: In this case the Plaintiff upon the return of the Writ (by entring a *Ne recipiatur* with the *Philizer*, out of whose Office the *Capias* did issue) may crave special Bail to be put into his Action, which the Defendant must put in before some Judge of the Court where the Cause depends, who will accept of such Bail as the validity or weight of the Cause doth require, or in his discretion shall be thought fit.

Bails f. 299. 319. 362.

If

If the appearance be upon Arreſt by the *Capias*, *Alias*, or *Plures*, then the Bail muſt be taken and entred by the *Philizer* of the ſame County where the Action was laid, and who made the ſaid Proceſs.

But if the Defendent be arreſted in the *Mayors*, *Bayliffs*, or *Sheriffs* Court, of any City or Corporation, and the Defendent by any Writ of Priviledge, or *Habeas Corpus*, do remove the ſame out of the ſame Corporation, to be tried at Common-Law above.

Note, upon ſuch Proceſs Bail is requirable, of what nature ſoever the Action be.

Then the Bail being taken by any Judge of the ſame Court, muſt be entred in the ſame *Prothonotaries* Office, where the ſaid Writ of Priviledge, or *Habeas Corpus* iſſued and was ſued out.

When a Cauſe is removed out of an Inferiour Court, the Plaintiff or his Attorney in ſuch cauſe, ought duly to enter their Caveats for good Bail, with all the Juſtices of this Court; and the Attorney for the Defendent which would remove any ſuch Cauſe, muſt give notice to the Plaintiff or his Attorney in the Inferiour Court, of the time when the Bail ſhall be put in, and of the names of the ſaid Bail, and where they live, and ſhall make *Affidavit* of ſuch notice; and if the Plaintiff or his Attorney will not attend to take Exception to the Bail, at the time of the taking thereof, nor within fourteen days after, then the ſaid Bail ſhall be forthwith filed.

And for that Priſoners are many times committed to the Fleet upon *Habeas Corpus*, and the Commitments are not filed with the Prothonotary, and ſo not recorded, whereby many times Priſoners eſcape, and no Action lies againſt the Warden of the Fleet for the ſame. To prevent this inconvenience, the Attorney that ſues forth the *Habeas*

Corpus for such Commitments, shall duly file the same in the Prothonotaries Office, that it may be recorded as it ought to be; and every Writ whereupon any Bail is taken in Court, shall be made returnable at a day certain, and the Bail thereupon shall be put in upon the Return of the Writ, and not before nor afterwards.

Note, that Writs of *Habeas Corpus*, directed to the Inferiour Courts of *London*, and *Westminster*, *Southwark*, and other Courts within five miles of *London*, may be returnable immediate; and if the Defendant intendeth to be bailed thereupon, or within four days after allowance of the said Writ, the day of which allowance being indorsed by such Officer as allows the same on the back of the said Writ, notice is to be given in writing of the names and addition of the said Bail, the time when, and the Judge before whom the same is to be put in, to the Plaintiff or his Attorney, or him that causeth the plaint to be enter'd; or if none can be found, then notice of the Premisses to be left in writing with the Chief Clerk of the Inferiour Court, or his Deputy, by the party that tenders the Bail, or his Attorney, and Oath made thereof, otherwise the Bail not to be taken, and a *Procedendo* granted, if desired, before Bail accepted.

That if no Bail in such case be put in within eight days after the *Habeas Corpus* allowed in those Courts, when it is returnable *immediate* a *Procedendo* may be granted by any Judge of this Court, if desired before Bail taken.

And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*, and if no Exceptions be taken within twenty days after the Bail taken, notice having been given as aforesaid, then the Bail delivered out to be filed.

That

That if Bail upon a *Habeas Corpus* be taken before a Judge at his Chamber, and not disassented unto, if not filed within four days after the twenty days, a *Procedendo* may be granted upon Certificate that it is not filed.

That in Term-time the Plaintiff in the Inferiour Court may speed the Defendent, to put in or to file his Bail, by a rule given in the Bill of Pleas; and if not filed according to the rule, upon a Certificate thereof, a *Procedendo* to be granted.

All Writs of *Habeas Corpus* returnable in Court, are to be returnable at a day certain.

Note, that upon Bail taken of a person in Custody, the Judges Clerk is to deliver the Bail to the Prothonotary, to be filed if assented unto; and to that end the Prothonotaries Fees are to be deposited: but the Prisoner not to be discharged until the Bail be assented unto or overruled in open Court.

The Defendent being as aforesaid bailed, the Plaintiff must bring his new Original within two Terms following, the one of which is that wherein the Bail was taken, unless it was taken the last day of the Term, and declare against him, as the nature of his Cause or Action shall require, observing the same form and manner in every respect or point, to procure Judgment and Execution by way of *Nihil dicit, non sum informatus, Confession of the Action*, Trial by *Nisi prius*, or otherwise, as is formerly set down and expressed by *Supersedeas*.

And the Plaintiff having obtained Judgment against the Defendent, and perceiving that he is not easily to be arrested and taken in Execution, or not sufficient to satisfie the same; but knoweth the Bail to be better able, then the Plaintiff may at his choice leave the Defendent, and prosecute the Bail in this manner following.

First, the Judgment being entred, he muſt ſue forth a *Capias ad ſatisfaciendum* againſt the Defendent, directed to the Sheriff of the ſame County where the Action was firſt laid, and upon the return thereof, get the ſame returned *Non eſt inventus*; then he muſt procure a Writ of * *Scire Facias* againſt the Bail, to ſhew cauſe why the Plaintiff ſhould not have Execution againſt them, according to the Recovery or Judgment ſo had againſt the Defendent, upon which Writ, if the Sheriff do return a *Scire Feci*, then there needs no ſecond Writ to be made; but if he return a *Nihil*, then there muſt be a ſecond Writ of *Scire Facias*, which being returned likewiſe with a *Nihil*, then the two Writs of *Scire Facias* muſt be taken out upon a Remembrance in the *Prothonotaries* Office, with the Returns of them, and Rules thereupon given, and filed accordingly with the *Cuſtos Brevium*; and thereupon, if the Bail ſhew not cauſe to the contrary, Judgment by Default ſhall be entred againſt them in the ſaid *Prothonotaries* Office, for the Sum in which they became Bail as aforeſaid; whereupon the Plaintiff may take Execution out againſt them, either by *Fieri facias*, or *Elegit*, but not by *Capias ad ſatisfaciendum*, becauſe it is againſt the tenour of the Bail.

* *Note, the* Scire Facias *muſt iſſue to the Sheriff of the County where the caption was.* Vid. Hob. 4. & 196.

And in this caſe obſerve, that the Plaintiff may likewiſe ſue and arreſt the Bail going by way of Original at the Common Law, for the Sum for which they became Bail, and arreſt their Bodies, either upon the *Capias*, *Alias*, or *Plures*, or ſue them to the *Exigent* thereupon, and declare upon the ſaid Recognizance, uſing all Proceedings therein as in an Action of Debt; but in this the Action muſt be laid in the County of *Middleſex* only, where the Records do lie, and whence the *Venire* out of that reſpect muſt riſe.

And

And if the Bail cannot be arreſted in the County of *Middleſex* upon a *Capias*, &c. you may return, *Non eſt inventus*, &c. and ſoe forth thereupon a Writ of *Teſtatum*, and by that means arreſt them in any other County where they may be found, obſerving all the Proceedings, as in Action of Debt.

WE have now ſhewed you how to proceed againſt the Bail, as well as againſt the Defendent himſelf; we come next to ſhew you how to proſecute a Writ of Errour, and reverſe Judgment thereupon, (which is not ſo abſolutely taken away, as moſt men conceive by the late † Statute,) but that ſtill if there be ſubſtantial matter of Errour to be allowed of the Court, it holds good after Verdict, and is not at all taken away in Judgment upon *Nihil dicit*, &c.

† *This is intended the Stat.* 13 Car. 2. Qu. *The Date of the Stat.*

As there are various cauſes of reverſing an Outlawry, as we formerly ſhewed, ſo ſome of them may ſerve to reverſe a Judgment, which I ſhall here particularly relate.

After a Judgment had and recovered by *Non ſum informatus*, Confeſſion, or otherwiſe, (if it be not by Trial of *Niſi prius*) theſe *Cauſes of Errour*, or any of them being duly found, may ſerve to reverſe and make void the ſame.

Firſt, If there be any material difference or variance between the Additions in the Original, or the Proceſs of *Capias*, *Alias*, *Plures*, and *Exigent*, and the Judgment which is warranted by them; this is good cauſe of Errour.

Secondly, If the Debt demanded in the Proceſs, or either of them, and the Debt in the Judgment recovered do not agree, but are different; this is a good cauſe of Errour.

Thirdly, If the Writ be not ordinarily and duly

returned and filed with the *Custos Brevium*, there is a just cause of Errour.

These may be filed upon motion before Errour assigned.

Fourthly, If there be not Warrants of Attorney duly filed, and put into the Office according as the cause requireth, as one for the Plaintiff upon suing forth of the *Exigent*, or upon the Entry of the Judgment, there is good cause of Errour, for which you are to make search with the Clerks of the Warrants for the time being.

And for these, and all other Errours, you are to search and get Copies of the Writs from the *Custos Brevium*, and observe diligently both them and their Returns, and confer them with the Judgment, as it is entred upon Record in the *Prothonotaries* Office, where you are to take your Number-Roll out of the *Doggets* to that purpose, that so you may go readily to it in the Treasury. *Qu.* Divers other causes of Errour.

See for this in a strange Case in Hob. 68.

Fifthly, If the Defendent be arrested by a Writ of *Testatum* in a Foreign County, and no Writ of *Capias ad satisfaciendum* returned against the Defendent with a *Non est inventus*, in the same County where the Action was laid and filed with the *Custos Brevium*, that is good cause of Errour in the Execution, but not in the Judgment.

The Plaintiffs Attorney in a Writ of Errour, from the first suing out of the Writ, must be careful to search such an Errour or such Errours as will hold, or else he will put his Client to unnecessary charges: Diverse Errours may be assigned, and yet none hold; want of form is not sufficient Errour, for that the Statute of *Vicesimo primo Jacobi*, helps.

So if the Judgment be in the *Common Pleas* in an Action upon the Case after a Verdict, and the Plaintiff in his Declaration lays his Damages 100 *l.* and the Jury finds 200 *l.* Damages, and Judgment entred

entred up accordingly, to assign this as Errour is sufficient to reverse the Judgment in a Writ of Errour: Now if the Plaintiff in this case had remitted 100*l.* and Judgment had been entred up but for 100*l.* as he laid his Damages, then it had been good, and no Errour.

If Judgment pass against a man who is *Infra ætatem*, and yet he defends not by Guardian, he may bring his Writ of Errour and assign this, and it is a sufficient Errour.

Now being informed of the causes of the *Errour*, and that the Defendent be not arrested and taken in Execution, but would avoid the same, then must he proceed as follows:

In the first place, having the Number-Roll, he shall do well to get a Copy of the Judgment, with the Additions of the Party Defendent, and of the Debt and Costs of Suit literally, as it is entred upon the Record.

The *Prothonotaries* Office, as I formerly told you, is the place where you are first to resort, and there to the Dogget-house, to find out your Number-Roll in the Doggets of that Term, when the Judgment was entred; and having found the Cause, take the Number-Roll, and then repair to the Records of the Treasury at *Westminster*, and so to the Roll, and take a true Copy of the Judgment in all things, as above.

Then carry the same, or a Copy of the *Precipe*, Debt and Costs, to the Cursitor of the same County where the Action is laid, who thereupon will make you a Writ of Errour, for which you pay 3 *s.*

Then you must go with the Writ of Errour to the Clerk of the Errours for the time being, who will take out the Judgment with the Debt and Costs of Suit in his Book of Remembrance for Bail, and

be ſure you carry with you good Sureties, ſuch as the validity of the Cauſe doth require. Note, that Bail is requirable upon a Writ of Errour *per Stat.* 3 *Jac. cap.* 8. in Debt upon a ſingle Bond, without condition for payment only, or Rent or Contract.

Thereupon your Sureties, together with the Writ, muſt be brought to the Lord Chief Juſtice of the Common Pleas for the time being, and there enter Bail in a Recognizance, together with the Defendent, in double of the Debt that the Defendent hath good cauſe of Errour, and ſhall follow the ſame Writ with the effect; and if the Defendent ſhall happen to be condemned therein, and not able to prove ſufficient Errour therein, then that the Defendent ſhall pay the condemnation therein, with further coſts of Suit, ſuch as ſhall be allowed, or they the Sureties for to do the ſame. To this the Judge ſubſcribeth his hand, and thereupon giveth Warrant to the ſaid Clerk of the Errours to make *Superſedeas*, one, two, or more, as the Defendent for his Indempnity or ſafe-guard from Arreſt ſhall require; which Writ or Writs the Defendent is to allow, with the Sheriff of the ſame County or Counties, where he ſtandeth in danger or fear of Execution before he be arreſted, or the ſaid Execution executed, either upon Body or Goods, or elſe the ſaid *Superſedeas* is of no force, nor can be allowed, whereof the Defendent is to have ſpecial care, that he have it in an early manner.

And this may be done as well in the Vacation, as in the Term-time, if the Defendent be not arreſted, or have his Goods taken in Execution, by virtue of the ſaid Judgment.

But if the Defendent be taken in Execution before the *Superſedeas* be procured, then the *Superſedeas* comes too late; for the Defendent ſhall not there-

upon

upon be releaſed, but muſt continue in durance, until ſuch time as the Judgment ſhall be reverſed by the ſaid Writ of Errour in the *Kings Bench*.

For reverſal whereof, he muſt not only ſue forth his Writ of Errour, as above, but alſo cauſe the whole Record of all the Proceedings from the Original, and the beginning of the ſame Cauſe (if Error be not found in the Entry of the Judgment it ſelf) to be certified by the ſaid Clerk of the Errours out of the *Common-Pleas* into the *Kings Bench*, and aſſign cauſe of Errour there. Note, the Original muſt be certified by the *Cuſtos Brevium* by force of a *Certiorari* in that behalf directed to him out of the *Kings Bench*.

The Record being thus certified, and Errour aſſigned upon the return of the ſaid Writ of Errour, he is to take Copies thereof: and thereupon ſue forth a Writ of *Scire Facias* to the Plaintiff in the Action to hear Errours.

To this the Plaintiff, if he ſee cauſe, may appear and plead, and the moſt uſual and common Plea there is, that the Record is nothing erroneous.

The Plaintiff having ſo pleaded, and willing to have the ſaid Errour argued, and the Judgment confirmed as cauſe ſhall require.

The Defendent, according to his Recognizance, muſt ſo follow the ſame with effect, or elſe he will be condemned therein.

The Defendent is then to labour for a day, to be given for the arguing of the ſame Errours, if the cauſe ſhall ſo require.

But if the Defendent do delay the Plaintiff, the Plaintiff is to ſue forth two *Scire Facias*'s againſt the Defendent, to ſhew cauſe why he ſhould not have Execution. And if at return of the ſecond *Scire Facias* Errours be not aſſigned, Judgment is confirmed for the Plaintiff. Note,

Note, that in this Case, upon a Writ of Errour brought upon a Judgment had in the Court of *Common Pleas*, and returned into the *Kings Bench*, the * Proceeding thereof must be only in the *Kings Bench*, to which Court, and to no other, it doth properly belong after it is thither returned.

* *By such a means a real Action may receive Process out of the Kings Bench*, 2 Inst. 23.

But a Writ of Errour upon a Judgment had † in the *Kings Bench* must be returnable in the Exchequer Chamber; and the cause of Errour is only heard and determined before the Lord Chief Justice of the *Common Pleas*, the Lord Chief Baron of the *Exchequer*; * And the rest of the Judges and Barons, who are of the Coif of those two Courts, and not before the Justices of the *Kings Bench*, where the Cause formerly depended, and received its Judgment.

† *This by the Stat. 27 Eliz. cap. 8. and see there in what Actions, and for what causes.*

* *which Justices and Barons, or any six of them, being of the Coif, have power to examine, &c.*

If the Errour be found, and allowed by them to be sufficient and good, then the said Judgment is by their full Consent and Judgment to be reversed and made void.

But take notice, that notwithstanding the reversal thereof, it takes not away the Plaintiffs cause of Action; for the Plaintiff may commence a new Action against the Defendent for the same cause, if he so think fit. Note further, he shall take advantage of his first Action, in case of the Statute of Limitation pleaded, if he commence his Suit again within a year and a day.

If the Errour be not found good and allowed, then is the former Judgment affirmed, and further Costs for Execution allowed to the Plaintiff, who may presently sue forth Execution out of the same Court where the Judgment was obtained, either against

against the Defendent or his Sureties, as he thinks best, and prosecuted against them either by *Scire Facias*, &c. as in the case of special Bail, as above, or by an Action of Debt: But if any Writ of Errour be sued in any any other Action than an Action of Debt, no Bail is required.

The Fees in this Case are very uncertain, and cannot be expresly set down; but the Heads of them, according to their Proceedings, are as follow:

For *search of the Record* to find the Errour.
For the *Copy of the Record*.
For the *Writ of Errour*.
For the *Lord Chief Justice's Fee*.
For *putting in Bail*.
For *certifying the Record*.
For assigning *Causes of Errour*.
For an *Habeas Corpus*.
For the *Allowing*.
For the *Return*.
For the *Supersedeas*.
For the *Copy of the Writ of Errour*.
For drawing *Diminution*, if need require.
For the *Copy* thereof.
For *entring the Errours*, and *Plea*.
For a *Certiorari*, if need require.
For a *Certificate* from the *Custos Brevium*.
For *Entring* the same, and *Diminution*.
For the *Warrant of Attorney*.
For the *Copies of the Books* for the Judges.
For *Counsellors Fees*.
For *Affirming the Judgment*.
For the *Copy* thereof.
For the *Scire Facias*, and entring.
For *filing and returning*.
For *Attorneys Fees*.
Cum multis aliis, quæ nunc, &c.

Note,

Note, that if upon any Judgment recovered and had againſt the Defendent, he be taken in Execution, or have his Goods taken, or his Land extended for ſame, and upon full payment, or ſatisfaction of the Debt and Coſts, the Plaintiff either in perſon or by his Attorney, do acknowledge ſatisfaction upon Record in the ſaid Court wherein the Judgment was entred; and if the Defendent at no time, from thenceforth or after, makes a Releaſe of Errours to the Plaintiff, and that there be good cauſe of Errour found in the ſaid Judgment, the Defendent may bring a Writ of Errour upon the ſaid Judgment; and upon arguing thereof, (as before the Errours being allowed by the Judges, and the Judgment thereupon reverſed) the Defendent may ſue forth a *Writ of Reſtitution* againſt the Plaintiff, and recover back again the full Debt and Coſts of Suit ſpecified in the ſaid Judgment; but if he hath made Releaſe, he is void of remedy.

And take notice further, that if there be a Judgment had and recovered againſt the Defendent by way of *Niſi prius*, and Verdict of Twelve Men, then unleſs he can find ſome cauſe in the Original, on the entring or giving of the ſaid Judgment after the Verdict ſo given and had, he may be admitted to ſue forth a Writ of Errour, but get no advantage thereby; for by many Statutes, and particularly the Statute of *Jeofails*, many great faults, Miſpriſſions, or Cauſes of Errour, had or committed in the proſecution of the ſaid Cauſe before the ſaid Verdict, are taken away.

Obſerve further, that if the Defendent be outlawed after Judgment, and there be good cauſe of Errour to be found, as well for or in the ſaid Judgment as Outlawry, the Defendent may bring a Writ of Errour, and be bailed for both, and have a *Super-*

ſedeas

ſedeas, as well for the ſafeguard of his Body as his Goods, before they be arreſted or taken for the ſame. Note, this is intended of a Judgment by Confeſſion or Default before Trial, elſe *Superſedeas* lies not.

Now becauſe we have omitted to ſpeak of acknowledging Satisfaction where the Debt is ſatisfied and Judgment had, whereby the Defendent, in caſe the Satisfaction be not acknowledged, may be in danger of paying twice one and the ſame Debt, therefore obſerve the enſuing Rules.

When you are to acknowledge Satisfaction, be ſure to have a ſufficient Warrant for it from your Client, and likewiſe let the Defendent ſeal a Releaſe of Errours for the reaſon before alleadged.

If it be in Term-time, get the Cryer to bring the Roll into the Court, and lay it before the *Secondary*, with the cauſe ready before him, and pray him to enter Satisfaction, which the *Secondary* of that *Prothonotary* in whoſe Office the Cauſe was entred, will do, you paying the Fees as follow.

Note, if the Plaintiff be dead, you muſt produce a Will proved, or Letters of Adminiſtration.

To the *Cryer* for bringing in the Roll, 6 *d.*
To the *Box*, if the Debt be not above 40 *l.*, 6 *d.*
If above 40 *l.* for every 100 *l.*, 1 *s.*
To the *Prothonotary*, 2 *s.*
To the *Secondary*, 8 *d.*
For the *Attorneys* Fee, 3 *s.* 4 *d.*

Having gone thus far in Action of Debt, it reſts now that we ſhould ſpeak ſomething of a *Wager at Law*, * which is a Plea uſually by the Defendent, where an Action of Debt is brought againſt him, either for Money lent, or upon a Book-debt, or upon Detinue, or any other Action of Debt, which is not grounded upon Specialty (unleſs it be where an account hath formerly been before Auditors) in all which

* *which is peculiar to the Law of* England, 2 Inſt. 45.

which Cases the Defendent may wage his Law. (2 *Inst.* 44.)

"In an Action of Account against a Bayliff of a "Mannor the Defendent cannot wage his Law, be-"cause it foundeth on the realty.

"In Actions of Debt for a Fine or Amerciament "in a Leet, the Defendent shall not wage his Law, "because the Leet is a Court of Record.

"But in an Action of Debt for an Amerciament "in a *Court Baron*, the Defendent may wage his "Law, because it is no Court of Record. Where-"soever a Man is charged as Executor or Admini-"stration, he shall not wage his Law; for no man "shall wage his Law of another man's deed.

"An Infant under the Age of 21 years, shall not "wage his Law; and if an Infant be Plaintiff, the "Defendent shall not wage his Law.

"An Alien shall wage his Law in that Language "he can speak.

"A Feme Covert together with her Husband "may wage her Law; for the debt of the Wife.

"A man outlawed or attainted in an Attaint, or "upon an Indictment of Conspiracy or Perjury, or "otherwise, whereby he becomes Infamous, shall "not wage his Law.

"In an Action of Account against a Receiver "upon a Receipt of Money by the hands of another "*pur Account render* (unless it be by the hands of his "Wife) the Defendent shall not wage his Law, be-"cause the Receipt is not the ground of the Action, "and traversable. But in an Action of Debt upon "an Arbitrement, or in an Action of Detinue by "the Bailment of anothers hand, the Defendent "shall wage his Law; because the Debt or *Detinet* "is the ground of those Actions, and the Contract "or Bailment, though it be by anothers hand, is but "the conveyance, and not traversable. Note,

Note, in Account before an Auditor, the Defendent may wage his Law, for 'tis out of the Statute of *W.* 2. *cap.* 11. But if the Account be before Auditors according to that Statute, they are Judges of Record, and therefore the Defendent cannot wage his Law, 2 *Inst.* 380. 20 *H.* 6. 16.

There be two ways of waging Law; the first is called *Lex instanter*, which is when your Client will presently upon pleading come into Court, and swear that he oweth or detaineth nothing, in which case it behoves you to have your Client ready at the the time when you plead; and the next day, or second, bring him into Court, and let him do his Law; in which case the Plaintiff cannot become Non-suit; but upon a Wager at Law, and a day assigned, he may be Non-suited, and must pay Costs, and then he may bring an Action on his Case.

Formerly the Plaintiff needed not to have had his Court recorded, and then upon a *Lex instanter* he might have been Non-suit, 2 *H.* 4. 13. But upon a *Lex instanter* the Plaintiff may imparle until a day in another Term, 3 *H.* 4. 2. But *Brook*, Title *Ley Gager* 85. makes a *Quere*, if it be the use at this day, *vid.* 3 *H.* 6. 49, 50.

Note, *Lex instanter* cannot be after a general Imparlance, nor doth an Essoin lie in the case, *v. H.* 6. 13.

For the other kind of Wages of Law; which is *Lex ad diem*, where a day is assigned, there is to be given fifteen days at the least after the Law pleaded for doing thereof, that is, fifteen days after the coming in of your Imparlance, at which time, if your Client be not ready to do his Law, he may be essoined, (that is, excused for that time) and have a longer day to do it, which you must do upon the Essoin-day of that return, wherein your Law should have been done in Court.

When

When a Man pleads *Nil debet per Legem*, and the Defendent essoins not at the day, nor performs his Law, the Plaintiff shall recover his Debt demanded and Costs, and the Plaintiff is to enter a *Præcipe* hereof in the Remembrance, upon which the *Prothonotary* signs Costs for a *Defecit de Lege*.

"When the Defendent pleads *Nil debet per Le-*
"*gem*, he is to have day till the next Term follow-
"ing, or he may do it presently at his own Election.

Note, that the Plaintiffs Attorney must ever look on the days of Exceptions, in case there be no Essoin cast to enter a *Ne recipiatur*; but if there be an Essoin cast then to adjourn it, and to look to the continuances, as this, and the nature of the Actions the Essoins are cast in, require.

Note further, that upon an Essoin cast, if it be not adjourned by the Plaintiff, he may be Nonsuited, as is before shewed.

If an Essoin be cast where it will not properly lie, you may have it dissolved, which is called *Quashing*, which shall turn the Defendents or Tenants default.

Note, the Tenant or Defendent may (for the most part) be essoined upon every Original Writ before appearance, with cause or without cause, whereby doth ensue great delay to the Plaintiff, and sometime the Defendent may be essoined after an Essoin in Action real, (of which we shall hereafter treat more at large by it self.) The Tenant at the return of the Original Writ, may be essoined, and then the Demandant must adjourn the same, wherein must be given common days of return, and at the day given by the Essoin, the Tenant may demand the view, wherein must be given other days of return, and at the day of view the Tenant may be essoined again, and then he may pray in aid of him in the Reversion, and at the return of the Summons

mons *Ad Auxiliand.* he that is prayed in aid, may alſo be eſſoined for nine Returns, at which time the firſt * Tenant may be eſſoined again: and all theſe delays the Tenant may enforce the Demandant to ſuffer.

**It is true in caſe of Voucher*, Hob. 46.

* *I think the Eſſoin upon the view is for the Attorney*, vid. H. 46.

Note, that in all real Actions upon the Summons, the Eſſoin may be adjourned by the Demandant unto the ninth return following inclusive: But of this more in its proper place.

The Fees incident to the Wager of Law and Eſſoins, Exceptions and Adjournment, follow in a Table amongſt other Fees.

Note, that many of theſe Actions of Debt are brought in Inferiour Courts, as in the Sheriffs or Mayors Court in *London*, and in other Corporations, where they hold Plea by their Charters for very great Sums, where the Defendent for delay or otherwiſe, doth uſually bring a *Habeas Corpus*, or Writ of Priviledge, which doth remove the Body (if in priſon) together with the Cauſe.

This *Habeas Corpus*, or Writ of Priviledge, muſt be made by one of the *Prothonotaries* Clerks, and muſt be ſigned by one of the Judges of the Court, and by the *Prothonotary*, and after ſealed and carried under Seal, and delivered to the Judge, or Steward, or other Officer in chief of ſuch Inferiour Court where the Cauſe is depending; where, upon allowance of it, they return it, and certifie the cauſes; which done, he that brings the *Habeas Corpus* muſt put in Bail above, before the Judge moſt uſually that ſigns the Writ, ſuch as the Judge ſhall approve of, when he ſees what the cauſes are.

But if the Party do not appear at the return of the ſaid Writ, and put in good Bail in ſome ſhort time (for they cannot put in common Bail, though

the Action be never so small) you may have a *Procedendo* to carry back the cause or causes to the Court below from whence they are removed, thereby to be proceeded unto Judgment.

See for these *Procedendo's* good Directions by the Stat. 21 *Jac. cap.* 23.

The Fees of a Habeas Corpus are as follow.

Qu. *These Fees.*	s. d.
To the *Clerk for the Writ,*	0--8
To the *Prothonotary* for signing it,	1--4
For the *Seal,*	1--7
To the *Judge for his hand thereunto,*	4--0
For the *Attorney's Fee,*	3--4
For *allowing the Writ,*	2--8
For the *Return of the first Cause,*	2--6
For every other *Cause,*	1--0
For a Bill of *Multas Causas,* if in *London,* for search,	0--4
To the *Serjant,* if in *London,* for his Fee at least,	10--8
For putting in Bail before the *Judge,* for the first Cause,	10--0
For *every other Cause,*	3--0
For the *Prothonotary* for filing the Bail for the first Cause,	6--4
For *every other Cause,*	2--0
For the *Attorney's Fee,*	3 -4

Now because there are many miscarriages in these *Habeas Corpus,* whereby the Writs themselves become unuseful, in being not allowed, all which proceeds most usually from the mistake of Title of the Corporation or Court to which it is directed, I have thought fit to insert the Titles of the most Corporations throughout *England,* as follows Alphabetically.

Abendon

2 · 12 · 9

A.

Abendon. MAjori & Ballivis Villæ de *Abendon*, & eorum cuilibet, Majori, Ballivis & Burgenſ.

Abbington. Burgi ſui de *Abbington*, & eorum cuilibet ſalutem.

Aburgavenny in Com. Mon. Seneſcallo & Ballivis *Henrici Nevil* Mil. Dom. *Aburgavenny*, Villæ ſuæ de *Aburgavenny*.

Adven. Majori & Ballivis Villæ noſtræ de *Adven.* & eorum cuilibet.

Cur. Admiralitat. *J.P.* Supremæ Cur. Admiralitatis *Angliæ* Mar. ejuſve Deputat. legitimo ibidem.

St. Albanes. Præclariſſimo *C. H.* Magno Admirallo noſtro *Angliæ*, ſive ejus locum Tenenti, aut Deputat. Seneſcallo Cur. noſtræ de Record. Tenent. infra Burg. S. *Albani* in Com. *Hertf.*

Aliter. Seneſcallo Cur. de Record. Burgi noſtri Sancti *Albani* in Com. *Hertf.*

Aliter. Majori & Burgenſibus ac Seneſcallo Cur. noſtræ de Record. Ipſo Seneſcallo infra Burgum Sancti *Albani* in Com. *Hertf.* & eorum cuilibet ſalutem.

Aldborough. Ballivis Villæ de *Aldborough* ſalutem.

Aldburges. Seneſcallo Manerii noſtri de *Aldburges* in com. *Ebor.* ſalutem.

Allerton. Ad Curiam *Thomæ* Com. *Exon.* Manerii & libertatis ſuæ de *Allerton* in Com.

Alesbury. Ballivis Villæ ſuæ de *Alesbury* in Com. *Buck.* ſalutem.

Andever. Ballivo & Burgenſ. burgi ſui de *Andever.* in Com. *Southampt.* ſalutem.

Appulby. Majori Burgi ſui de *Appulby* in Com. *Weſtmor.* ſalutem.

Arundel. Majori & Burgenſ. burgi ſui de *Arundel* in Com. *Suſſex* ſalutem.

Avendon. Majori & Ballivis Villæ noſtræ de *Avendon* in Com.

Aud. Archiepiſc. Cantuar. Reverendiſſimo in Chriſto Patri *J.* providentia divina *Cantuar.* Archiepiſc. totius *Angl.* Primat. & Metropolit. audientiæ cauſarum & negotiorum Auditori ſalutem.

Aleeſter in Com. Warv. Seneſcallo Com. ff. *Brook*, Cur. ſuæ de Recordo apud *Aleeſter* in Com. *Warv.* tenen. vel ejus Deputat. ſalutem.

St. Auguſtini in Com. Kanc. Seneſcallo Cur. de Record. pro lib. nuper diſſoluti Monaſterii S. *Auguſtini* in Com. *Kanc.* necnon Ballivo ejuſdem libertat. ſalutem.

B

Badbury. AD Hundred. Mountjoy Blunt Com. Mountjoy de *Badbury* in Com.

Banbury in Com. Oxon. Majori aut ejus Deputat. uno Aldermanno, Recordatori vel ejus Deputat. duobus Capitalibus Burgenſ. burgi de *Banbury*, in Com. *Oxon.* vel tribus eorum ſalutem.

Banbury. Ballivis *Lanceloti* Epiſc. *Lincoln.* Cur. ſuæ de *Banbury*.

Barnſley cum Dadworth. Ad Cur. Manerii de *Barnſley* cum *Dadworth* in Com.

Barnſley. Ad Cur. Manerii noſtri de *Barnſley* in Com.

Barnſtable. Majori, Aldermannis, & Burgenſ. burgi ſive villæ de *Barnſtable*, alias *Barſtable*.

Barwick. Majori villæ *Barwick* ſuper *Twedam*.

Baſingſtoke. Ballivis & Seneſcallo villæ de *Baſingſtoke* in Com. *Southampt.* & eorum cuilibet ſalutem.

Bath. Majori Aldermannis Recordat. & Juſtic. civitat. noſtræ *Bathon.*

Bathon. Civit. Majori Recordatori Aldermannis & Juſtic. civit. *Bathon.* in Com. *Somerſet*, & eorum cuilibet ſalutem.

Aliter. Majori Juſtic ac Recordatori civitatis *Bathon.* ſalutem.

Seneſ-

Bathon. Episcopo. Seneſcallo ſive Ballivo Cur. ſuæ de placitis ad Reverendum in Chriſto patrem Dom. N. permiſſione divina *Bathon.* & *Wellen.* Epiſcop. pertinen. ſive conceſſ. Tenent. apud *Guild-Hall* infra burgum & villam noſtram de *Welles* in Com. *Somerſet* ſalutem.

Battel. Seneſcallo & Ballivis *A. Brown*, Milit. Dom. Vic. *Mountague* libertat. ſuæ de *Battel* Comitat. *Suſſex.*

Bedford. Majori, Aldermannis, Burgenſ. & Recordat. burgi ſive villæ de *Bedford.*

Bedwyn magna. Portgreve, Ballivo & Burgenſ. burgi ſui de *Bedwyn* in Com.

Berealſton. Majori & Burgenſibus burgi ſui de *Berealſton* in Com. *Devon.* ſalutem.

Beverley. Majori & Gubernatoribus Villæ noſtræ de *Beverley* in Com. *Ebor.*

Beverley. Majori, Gubernatori, & Burgenſ. Vill. ſuæ de *Beverley*, & eorum cuilibet.

Beverlacy. Majori, Recordator. & Gubernatoribus Vill. *Beverlacy.*

Burgus de Bewdley. Ballivo & Burgenſ. burgi noſtri de *Bewdley* in Com. *Wigorn.*

Bewdley. Ballivo & Burgenſ. burgi ſui de *Bewdley* in Com. *Salop.*

Bidyford. Majori, Aldermannis, Burgenſibus, & Recordat. vill. ſuæ de *Bidyford* in Com. *Devon.* ſalutem.

Blechinly. Burgenſibus burgi ſui de *Blechinly* in Com. *Surrey* ſalutem.

Blandford Forum. Ballivo & Conſtabular. burgi ſui de *Blandford Forum* in Com. *Dorſet* ſalutem.

Aliter. Ballivis & Conſtabular. burgi ſui de *Blandford Forum* in Com. *Dorſet* parcel. Ducatus ſui *Lancaſtr.* ſalutem.

Bodmyn jam vel Bodmyn. Majori & communi Clerico burgi noſtri de *Bodmyn* in Com. *Cornubiæ.*

Borrowbriga. Seneſcallo burgi noſtri de *Burrowbriga* in Com. *Ebor.* parcel. Ducat. noſtri *Lancaſtr.* ſalutem.

Boſſyn. Ballivo & Burgenſibus burgi ſui de *Boſſyn* in Com. *Cornub.*

Boſton in Com. Lincoln. Majori & Burgenſibus burgi noſtri de Sancto *Botolpho* in Com. *Lincoln.*

Brackley. Majori & Burgenſ. burgi ſui de *Brackley* in com. *Northampt.* ſalutem.

Caſtri Bricnels. Ballivis ſuis caſtri ſui de St. *Bricnel* in Foreſta de *Dean* ſalutem.

Bridewel. Majori & Communitat. ac omnibus Civibus civit. *London* necnon Gubernator. poſſeſſion. de *Bridewel* & Sanct. *Thomæ* Apoſt.

Bridge-houſe. Ad Cur. *W. E.* de *Bridge-houſe* in Com.

Bridgnorth in Salop-brages. Ballivis & Burgenſ. villæ noſtræ de *Bridgnorth*, & eorum cuilibet.

Bridport. Ballivis & Burgenſ. burgi ſui de *Bridport* in com. *Dorſet* ſalutem.

Bridgwater. Majori & Ballivis villæ ſuæ de *Bridgwater* ſalutem.

Briſtol. Majori, Aldermannis ac Vic. civitat. ſive villæ *Briſtol*, ac Majori & Conſtabular. ſtapulæ ejuſdem civitatis ſive villæ necnon Ballivis, Majori Communitat. ejuſdem civit. ſive villæ Cur. ſuæ Toll. ac Ballivis dict. Majoris & Communitat. ejuſdem civitat. ſive villæ Cur. pedis pulverizat. & eorum cuilibet ſalutem.

Branchard. Ad Cur. *F.* Ep. de *Branchard Forren* in Com.

Brownſhal. Ad Hundred *Johan. D.* Manerii ſui de *Brownſhal* in com.

Bruſtwick. Ad Cur. *H. C.* Militis Manerii ſui de *Bruſtwick* in Com.

Buckingham. Ballivis & Burgenſibus villæ ſuæ de *Buckingham* in Com. *Buck.* ſalutem.

Burton ſuper Trent. Ballivis & Seneſcallo *T. Paget.* Dom. *Paget.* burgi ſui de *Burton* ſuper *Trent*, & eorum cuilibet.

Bury

Bury S. Edmundy. Aldermannis, Recordator. & capital. Burgensibus burgi nostri de *Bury S. Edmond.* in com. nostro *Suff.* & eorum cuilibet.

C.

Calne. CONstabulario & Burgensibus burgi sui de *Calne* in com.

Camelford. Majori & Burgensibus burgi sui de *Camelford* in com. *Cornub.*

Cancellario Angliæ. Prædilecto & fideli suo *A. B.* Cancellario suo *Angliæ.*

Cantabr. universitas. Procancellario Universitatis *Cantabrig.* salutem.

Cantabr. Vill. Majori & Ballivis villæ *Cantabr.*

C. Cantuar. Majori civitatis *Cantuar.* (unde quære.)

Cur. Palatii Archiepisc. in Cantuar. Senescallo libertat. *Gilberti.* Dom. Archiepiscopi *Cantuar.* Cur. Palatii sui infra civit. *Cantuar.*

Aliter. Senescallo Cur. Palatii Dom. Archiepisc. *Cant.*

Christi Eccles. Cantuarien. Senescallo altæ Cur. Decani & Capituli Eccl. *Christi, Cantuar.*

Cantuar. Provinciæ supremis commission. Reverendissimo in Christo Patri *G.* providentia divina *Cantuar.* Archiep. Primat. & Metrop. Ac aliis supremis Commissionar. Reg. ad causas Ecclesiasticas inter alias sub magno Sigillo *Angl.* legitime & sufficienter authoritat.

Caresbrook. Clarissimo consanguineo suo *H.* Com. *Southamp.* Constabulario castri sui de *Caresbrook* in Com. *Southampt.* vel ejus locum-tenenti, ac Portatori sive ejus Deputat. ibidem.

Carleil, Majori & Ballivis vill. de *Carleil* in Com. *Cumb.* & eorum cuilibet salutem.

Carliſle. Majori & Ballivis civitat. *Carliſle* salutem.

Carlick civit. Majori & Ballivis civit. *Carlick* in com.

Carlington. Majori & Burgensibus burgi sui de *Carlington* in Com.

Carlion. Ad Cur. *W.* Comitis *Pembrook* de *Carlion* in Com.

Carlyon. Majori & Ballivis vill. de *Carlyon*, & eorum cuilibet.

Carnauton. Seneſcallo & Ballivo Manerii ſui de *Carnauton* in Com. *Cornub.* ſalutem.

Carvic. Carvion Majori & Ballivis vill. de *Carvion* in Com.

Caſtle-Riſing. Majori & Burgenſ. vill. ſuæ de *Caſtle-Riſing*.

Caſtri Ep. villa in Com. Salop. Ballivo & Burgenſibus vill. *Caſtri Epiſcopenſ.* in Com. *Salop.* ſalutem.

Caſtri Novi ſubt. Lin. Majori & Burgenſibus burgi ſui *Novi Caſtri* ſubtus *Linam* in Com. *Staff.* ſalutem.

Caſtri novi ſuper Tin. Majori & • vill. *Caſtri Novi* ſuper *Tinam* in Com. *Northumb. This was lately made a County Palatine*, (unde quære.)

Ceſtr. I. *Carolo* Principi *Walliæ*, Duci *Cornub.* Comiti *Ceſtr.* & *Flint*, filio ſuo & clariſſimo ſive ejus Camerario civitat. Palat. *Ceſtr.* ſeu ejus locum tenen. ibidem.

Aliter. Camerario Com. Palatini noſtri *Ceſtr.* ſeu ejus locum tenen. ibidem ſalutem.

Ceſtr. Civit. Majori & Civibus civitat. *Ceſtr.* in Com. Palat.

Chayford. Stannar. Præclariſſimo conſanguineo ſuo *W.* Com. *Pembrook* Camerario hoſpit. ſui, præclari ordinis Garterii Milit. cuſtodi *Stannar.* in Com. *Devon.* & *Cornub.* capitali Seneſcallo totius Ducat. Vic. Subſeneſc. Deputat. ſive ejus locum tenen. Cur. *Stannar.* de *Chayford* in Com. *Devon.* ſalutem.

Cheltenham. Capitali Seneſcallo, Ballivo, & Sectatoribus Manerii, burgi ſive villæ de *Cheltenham* necnon cuſtod. Goalæ noſtr. ibidem.

Cheney-Court. Ballivis Reverendi in Chriſto Patris *T.* Epiſc. *C.* Cur. ſuæ de le *Cheney-court*.

Cheping-Wycomb. Majori, Ballivis, & Burgenſ. de *Cheping-Wycomb*.

Chepſtow villa. Seneſcallo & Ballivis villæ de *Chepſtow* in Com. *Monmouth*. Seneſ-

Chepſtow Admiralitat. Seneſcallo Cur. Admiralitatis in *Chepſtow* in Com. *Monmouth.*

Cheſt-hunt. Seneſcallo Cur. L. Militis Maner. ſui de *Cheſt-hunt* in Com. *Hartf.*

Chipping-Hamden. Ballivis & Burgen. burgi noſtri de *Chipping-Hamden* in Com. *Glouc.*

Chipping-Norton. Ballivis, Seneſcallo ſive communi Clerico vel Deputat. ejus burgi ſive villæ de *Chipping-Norton* in Com. *Exon.* ſalutem.

Cirographerio. *A. C.* Armigero *Cirographerio* Cur. noſtræ de Banco ſalutem.

Chriſt-church. Majori & Burgenſ. burgi ſui de *Chriſt-church* in Com. *Southampt.*

Ciceſter. Majori, Aldermannis ac Civibus civitat. *Ciceſter* ſalutem.

Cinque-Portc. Dilecto & fideli Conſiliar. noſtro *Ed.* Dom. *Zouch*, Sanct. *Mauræ* & *Cantelupæ* Conſtabular. caſtri noſtri *Dover* cuſtodi, Cancellario & Admirallo *Quinque Portuum* noſtrorum & membrorum eorundem ſive ejus locum-tenenti, vel Deputat. ibidem ſalutem.

Clay juxta mare. Seneſcallo *C. H.* Curiæ ſuæ Portus de *Clay* juxta mare.

Clifton Dartmouth Hardne. Majori, Ballivo & Burgenſibus burgi ſui de *Clifton Dartmouth Hardnes* in com. *Devon.* ſalutem.

Clink. Seneſcallo Cur. libertatis Reverendi in Chriſto Patris Dom. *Tho.* Epiſc. *Winton* Manerii ſui de *Southwark.*

Clithero. Ballivo burgi ſui de *Clitheroe* in com. *Lancaſtr.* ſalutem.

Chinſland Stannar. Gardiano Stannar. *Devon* & *Cornub.* & capitali Seneſcallo Ducat. ſui *Cornub.* aut ſuo Deputat. ibidem. Et præcipue ſibi aut ſuo Deputat. Seneſcallo infra Manerium de *Stan. Chinſland* parcel. Ducat. *Cornub.* præd. infra com. *Cornub.* &c.

Ballivis

Colchester. Ballivis villæ de *Colchester* salutem.

Coldfield Sutton. Gardiano & Societati villæ nostræ de *Sutton Coldfield* in Com. *War.*

Commissario Cur. Archiepisc. *A. B.* Auditori causarum venerabilis in Christo Patris *G.* Archiepiscop. *Cantuar.* totius *Angliæ* Primat. causarum & negotiorum Cur. & Audientiæ suæ.

Commissario Cur. Lond. *A. B.* Commissario generali *R.* Episcopi *Lond.* Cur. suæ Christianitatis apud tenend. vel ejus locum-tenenti.

Coventr. civit. Majori & Ballivis civitat. *Coventr.* in com. *War.* salutem.

Corf. Castr. Majori & Senescallo de *Corf-Castle* in com. *Dorset.* (*qu.* an *Corf* vel *Croft.*)

Cramborn. Ad Hundred. Cur *W.* Comitis *Sarum* Manerii sui de *Cramborn* in com.

Cricklade. Ballivo & Burgensibus burgi sui de *Cricklade* in Com. *Wilts* salutem.

Cullenbeck. Seneschallo Cur. suæ de *Cullenbeck* in com.

Custod. brev. in Communi Banco. Dilecto & fideli nostro *J. L.* Custod. brevium nostrorum de Communi Banco.

Custod. Sigill. magni. Prædilecto & fideli suo *J. W.* Episcopi *Lincoln.* & Custodi magni Sigilli sui *Angliæ.*

Custod. privat. Sigill. *E.* Comiti *Wigorn.* & Custodi privati Sigilli sui.

D.

Daux. BAllivo *A. C. M.* Manerii sui de *Daux* in com. *Ebor.*

Dartmouth. Majori, Ballivo & Burgens. de *Clifton Dartmouth Hardnes* in Com. *Devon.*

Daventry. Ballivo, Burgensibus & Communitati de burgo de *Daventry* in Com. *Northampt.* salutem.

Dinbigh. Ballivis & Recordat. burgi sive villæ de *Denbigh* salutem.

Derby. Ballivis, Recordatori & Burgensibus villæ sive burgi

burgi de *Derby* in Com. *Derby*, & eorum cuilibet salutem.

Derby. Ballivis & Burgensibus burgi nostri *Derby*.

Deviſes. Majori, Ballivis & Burgensibus burgi nostri de *Deviſes*.

Doncaſter. Majori & Recordatori villæ de *Doncaſter*, & eorum cuilibet.

Donwich. Ballivis vill. sive burgi de *Donwich* in Com. *Suffolk*.

Dorcheſter. Ballivo & Recordatori burgi sui de *Dorcheſter* in Com. *Dorſet*.

Dover. Constabular. nostro Castri nostri de *Dover* in Com. *Canc.* infra libertat. Quinque Portuum sive Deputat. ejus ibidem seu eorum alteri.

Downton. Constabulario et Burgensibus burgi sui de *Downton*. in Com.

Downhevit, alias Launceſton. Majori, Aldermannis, et Recordatori burgi sui de *Downhevit*, alias *Launceſton* in Com *Cornub.*

Downwick. Ballivis burgi sive villæ de *Downwick* in Com. *Suf*, salutem.

Droitwich. Ballivis et Burgensibus burgi sui de *Droitwich* in Com.

Dunelm, vel Durham. Reverendo in Christo Patri *W.D.* providentia divina *Dunelm.* Episcopo. aut ejus locum-tenenti ibidem salutem.

Sede vacante. *T.C.* Armigero Cancellario com. Palatini *Dunelm.* Sede Episcopali ibidem jam vacante.

Aliter in alio libro. Custodi Spiritualitatis Episcopatus *Dunelm.* Sede Episcopali vacante.

E.

Eaſt-Greenſted. BAllivo et Burgensibus burgi sui de *Eaſt-Greenſted* in com. *Suſſex* salutem.

Eaſt-Low. Majori et Burgensibus burgi sui de *Eaſt-Low* in com. *Cornub.*

Ballivis

Colcheſter. Ballivis villæ de *Colcheſter* ſalutem.

Coldfield Sutton. Gardiano & Societati villæ noſtræ de *Sutton Coldfield* in Com. *War.*

Commiſſario Cur. Archiepiſc. *A. B.* Auditori cauſarum venerabilis in Chriſto Patris *G.* Archiepiſcop. *Cantuar.* totius *Angliæ* Primat. cauſarum & negotiorum Cur. & Audientiæ ſuæ.

Commiſſario Cur. Lond. *A. B.* Commiſſario generali *R.* Epiſcopi *Lond.* Cur. ſuæ Chriſtianitatis apud tenend. vel ejus locum-tenenti.

Coventr. civit. Majori & Ballivis civitat. *Coventr.* in com. *War.* ſalutem.

Corſ. Caſtr. Majori & Seneſcallo de *Corſ-Caſtle* in com. *Dorſet.* (*qu.* an *Corſ* vel *Croft.*)

Cramborn. Ad Hundred. Cur *W.* Comitis *Sarum* Manerii ſui de *Cramborn* in com.

Cricklade. Ballivo & Burgenſibus burgi ſui de *Cricklade* in Com. *Wilts* ſalutem.

Cullenbeck. Seneſcallo Cur. ſuæ de *Cullenbeck* in com.

Cuſtod. brev. in Communi Banco. Dilecto & fideli noſtro *J. L.* Cuſtod. brevium noſtrorum de Communi Banco.

Cuſtod. Sigill. magni. Prædilecto & fideli ſuo *J. W.* Epiſcopi *Lincoln.* & Cuſtodi magni Sigilli ſui *Angliæ.*

Cuſtod. privat. Sigill. *E.* Comiti *Wigorn.* & Cuſtodi privati Sigilli ſui.

D.

Daux. BAllivo *A. C. M.* Manerii ſui de *Daux* in com. *Ebor.*

Dartmouth. Majori, Ballivo & Burgenſ. de *Cliſton Dartmouth Hardnes* in Com. *Devon.*

Daventry. Ballivo, Burgenſibus & Communitati de burgo de *Daventry* in Com. *Northampt.* ſalutem.

Dinbigh. Ballivis & Recordat. burgi ſive villæ de *Denbigh* ſalutem.

Derby. Ballivis, Recordatori & Burgenſibus villæ ſive burgi

burgi de *Derby* in Com. *Derby*, & eorum cuilibet salutem.

Derby. Ballivis & Burgensibus burgi nostri *Derby*.

Deviſes. Majori, Ballivis & Burgensibus burgi nostri de *Deviſes*.

Doncaſter. Majori & Recordatori villæ de *Doncaſter*, & eorum cuilibet.

Donwich. Ballivis vill. sive burgi de *Donwich* in Com. *Suffolk*.

Dorcheſter. Ballivo & Recordatori burgi sui de *Dorcheſter* in Com. *Dorſet*.

Dover. Constabular. nostro Castri nostri de *Dover* in Com. *Canc.* infra libertat. Quinque Portuum sive Deputat. ejus ibidem seu eorum alteri.

Downton. Constabulario et Burgensibus burgi sui de *Downton*. in Com.

Downhevit, alias Launceſton. Majori, Aldermannis, et Recordatori burgi sui de *Downhevit*, alias *Launceſton* in Com *Cornub.*

Downwick. Ballivis burgi sive villæ de *Downwick* in Com. *Suf*, salutem.

Droitwich. Ballivis et Burgensibus burgi sui de *Droitwich* in Com.

Dunelm, vel Durham. Reverendo in Christo Patri *W.D.* providentia divina *Dunelm.* Episcopo. aut ejus locum-tenenti ibidem salutem.

Sede vacante. *T.C.* Armigero Cancellario com. Palatini *Dunelm.* Sede Episcopali ibidem jam vacante.

Aliter in alio libro. Custodi Spiritualitatis Episcopatus *Dunelm.* Sede Episcopali vacante.

E.

Eaſt-Greenſted. BAllivo et Burgensibus burgi sui de *Eaſt-Greenſted* in com. *Suſſex* salutem.

Eaſt-Low. Majori et Burgensibus burgi sui de *Eaſt-Low* in com. *Cornub.*

Ballivis

East Stretford. Ballivis villæ ſuæ de *East Stretford* in com. *Notting.* (quære ſi *North* vel *Not.*)

Ebor. civitas. Majori, Aldermannis, & Vic. civitat. *Ebor.*

Senſti Petri Ebor. Seneſcallo Cur. libertatis Decani & Capituli Eccleſiæ Cathedr. S. *Petri, Ebor.*

Eborum Beati Petri. Seneſcallo Cur. libertatis Decani & Capituli Eccl. & Metropol. Beati *Petri, Ebor.* in com. *Ebor.*

Edlogom. Ad Cur. *E. M.* Armig. Manerii ſui de *Edlogom* in com.

Ely. Juſtic. Epiſcop. *Elien.* ad placita infra Inſulam *Elien.* tenend. ac Seneſcallo ejuſdem Epiſcopi infra libertat. Inſulæ præd. & eorum cuilibet ſalutem.

Epiſc. Caſtrium in com. Salop. Ballivo & Burgenſibus villæ Caſtri Epiſcopenſis in com. *Salop.*

Eſcaetori. *A. B.* Armigero *Eſcaetori* noſtro com. noſtri *Salop.* Ac Vic. ejuſdem com. necnon omnibus Ballivis & ſingulis Miniſtris noſtris com. præd. tam infra libertates quam extra, ſalutem.

Evermouth. Majori & Burgenſibus villæ ſuæ de *Evermouth* in com. *Southampton.*

Eveſham, commonly *Eſam* in the *Vale.* Majori & Burgenſibus burgi ſui de *Eveſham* in com. *Wigorn*, *&c.*

Civit. Exon. Majori & Ballivis civitatis ſuæ *Exon.* in com. *Devon.* ac Ballivis Cur. Provoſt. ejuſdem civitat. & eorum cuilibet.

Eye. Ballivis noſtris villæ & burgi de *Eye* ſalutem.

F.

Farnham. BAllivis burgi & villæ de *Farnham* in com. *Surry.*

Aliter. Seneſcallo Cur. caſtri Reverendi in Chriſto Patri Dom. *L. Winton.* Epiſcopi Manerii ſui de *Farnham* in com. *Surry.*

Ac Fleet. Guardiano priſonæ noſtræ de *le Fleet*, ſive ejus locum-tenenti ibidem ſalutem.

Ad

Fordington. Ad Curiam *Caroli*, Principis *Walliæ*, Ducis *Cornub.* Comitis *Caſtr.* & *Flint* Manerii ſui de *Fordington* in com. *Dorſet.*

Foriet. Seneſcallo & Ballivo libertatis *Foriet.* Orient. juxta vill. *Salop.*

Foway. Præpoſitis & Burgenſibus burgi ſui de *Foway*, in com. *Cornub.* ſalutem.

G

Gatehouſe Weſtminſt. CUſtodi noſtro de *le Gatehouſe* infra *Weſtmonaſterium.*

Gatton. Burgenſibus burgi ſui de *Gatton* in com. *Surry.*

Gillingham. Seneſcallo Cur. ſuæ de *Gillingham* in com. *Derſet*, hac vice ſede Archiepiſc. *Cantuar.* jam vacante ſeu ejus Deputat. ibidem.

Aliter ſede Epiſcop. plena. Qu. *Whether it belongeth to the Crown, or to the Biſhop here.*

Gipwicum, or Ipſwich. Ballivis villæ ſuæ *Gipwici*, vel de *Ipſwich* in comitat. *Suff.* ſalutem.

Glaſtonbury. Curiæ libertatis Dom. Regis de *Glaſtonbury* in com. *Somerſet.*

Aliter. Cur. Dom. Regis 12. *Hidari* de *Glaſton.* libertatis in com. *Somerſet.*

Glouceſter civitas. Majori, Aldermannis & Vic. civitatis noſtræ de *Glouceſter.*

Goodrich. Ballivis *W. M.* Armig. & *B. H.* Gen. Manerii ſive Dom. ſui de *Goodrich* in com.

Grampount, or Granpound. Majori & Burgenſ. burgi ſui de *Grampound* in com. *Cornubiæ.*

Grantham. Aldermanno & Burgenſibus villæ de *Grantham* in com. *Lincoln.* ſalutem.

Graveſend and Milton. Præpoſit. Juror. & capital. Inhabitant. villarum & paroch. de *Graveſend* & *Milton* in com. *Canc.*

Eaſt-Grenſted. Ballivo & Burgenſ. burgi ſui de *Eaſt-Greenſted* in com. *Suſſex*, ſalutem.

Majori

Grimsby. Majori & Burgenſibus villæ ſuæ magni *Grimſby* in com. *Lincoln.*

Guilford. Majori & probis hominibus villæ noſtræ de *Guilford.*

H.

Harbil. AD Wapentagium noſtrum de *Harbil* in com.

Hartpool. Majori et Burgenſibus burgi ſui de *Hartpool* infra Epiſcopatum *Dunelm.*

Haſelmere. Burgenſibus burgi ſui de *Haſelmere* in com. *Surry.*

Hatfield. Ad Curiam Manerii noſtri de *Hatfield* in com.

Haver. at Bower in quo Rumford. Seneſcallo et Sectatoribus Cur. Manerii noſtri de *Havering* at *Bower.*

Helſton. Majori et Burgenſibus burgi noſtri de *Helſton* in com. *Cornub.*

Henley ſupr. Thames. Ballivis, Gardian. Pontinariorum burgenſium et civitatis villæ de *Henley* ſuper *Thames.*

Henley ſuper Thameſin. Ballivis, Guardian. Burgenſibus et Communitat. villæ de *Henley* ſuper *Thameſin.* in com. *Berk* ſalutem.

Hertf. Pal. Epiſ. Ad Cur. Sanct. Epiſc. *Hereford* Palatii *Heref.*

Hertf. civit. Majori, Aldermannis et Civibus civitatis noſtræ *Heref.*

Herwich: S. Majori et Seneſcallo burgi ſui *Herewici.*

Hertf. burgus. Majori et capit. Burgenſ. burgi noſtri de *Hertf.* necnon Seneſcallo Cur. noſtræ de Record. ibid.

Heſton. Majori et Ballivis burgi noſtri de *Heſton* in com. *Cornub.*

Hexam. Seneſcallo Cur. ſuæ de *Hexham* in com. *Weſtmerl.*

Aliter. Seneſcallo Manerii noſtri de *Hexham* in com. *Weſtmerland.*

Heydon in Holdernes. Majori et Ballivis villæ ſuæ de *Heydon* in *Holdernes* in com. *Ebor.*

Heytesburg. Ballivo et Burgenſibus burgi ſui de *Heytesburg* in com. ſalutem.

Higham

Higham-Ferrers, or Ferris. Majori et Aldermannis villæ noſtræ de *Higham-Ferrers*, et eorum cuilibet.

Horſham. Majori et Burgenſibus burgi ſui de *Horſham* in com. *Suſſex*, ſalutem.

Huntington, burg. in com. Southampt. Qu. *Hunt*, Ballivis vill. noſtr. *Hunt.*

I.

Jernemouth. BAllivis villæ ſive burgi et libertat. villæ ſive burgi magnæ *Jernemouth.*

Aliter. Ballivis vill. noſtr. magnæ *Jernem.* ſalutem.

St. Jermins. Præpoſit. et Seneſcallo burgi de St. *Jermins* in com. *Cornub.*

Inſul Elien. Juſtic. noſtris ad placita infra Inſul. *Elien.* in com. *Cantabr.* tenend. Aſſign.

St. Johannis Beverlacy. Seneſcallo Cur. libertat. ante placitorum S. *Johannis Beverlacy* in com. *Ebor.* ſalutem.

St. Ives. Præpoſit. et Burgenſibus burgi ſui de St. *Ives* in com. *Cornub.*

Ipſwich. Ballivo villæ ſuæ de *Ipſwich* in com. *Suf.* ſalutem.

Juſticiariis ad Jacobi Leg. Militi capital. Juſtic. noſtro ad placita coram nobis tenend. aſſignat.

Aliter. *T. H.* Uni Juſtic. noſtrorum ad placita coram nobis tenend. *&c.*

Juſtic. de Banco. *H. H.* Mil. et Bar. capitali. Juſtic. noſtro de Banco.

Aliter. *R. H.* Mil. uni Juſtic. noſtrorum de Banco.

K

St. Katherines prope Turrim London. SEneſcallo, Magiſtro ſive Cuſtod. Hoſpital. ſive liber. Capell. S. *Katherinæ* prope Turrim *London*, ſeu ejus locum-tenenti ibidem.

Aliter. Seneſcallo libertat. Magiſtr. Fratrum et Sororum et Capel. in Eccleſia Hoſpit. S. *Katherinæ* virginis et martyris prope *London*, Cur. noſtr. ibidem, necnon Ballivo ejuſdem.

Kendal

Kendal. Ballivis Manerii noſtri de *Kendal* in com. *Weſtmerland.*

Kirby-Kendal. Aldermanno, Recordat. & Burgenſ. burgi de *Kirby-Kendal* in com. *Weſtmer.*

Kings-Norton. Seneſcallo, Ballivo & Sectatoribus Cur. Maner. de *Kings-Norton* in com. *Wigorn.* & eorum cuilibet.

De quo. Qu. *This being the late Queens, and before her death was ſtiled accordingly.*

Kingſton ſuper Hull. Majori & Vic. villæ noſtr. de *Kingſton* ſuper *Hull.*

Kingſton ſuper Tham. Ballivis & Seneſcal. Cur. villæ noſtr. de *Kingſton* ſuper *Thameſin*, & in abſentia dicti Seneſcal. Ballivis et Recordatori ejuſdem villæ ſive duobus eorum ſalutem.

Knaresborough. Seneſcallo Cur. Honoris de *Knaresborough* in com. *Ebor.* parcel. Ducat. noſtri *Lancaſtr.*

L.

Lancaſtr. CAncellario noſtro Com. Palatini noſtri *Lancaſtr.* vel ejus locum-tenent. ibidem ſalut. vobis mandamus quod per breve noſtrum, ſub ſigillo Com. Palatini noſtri præd. debet. conficiend. mand. fac. Vic. Com. præd. quod, *&c.*

Lancaſt. burgus. Majori et Ballivo burgi ſui *Lancaſtr.* in com. *Lancaſtr.*

Lanceſton, alias Downhevet. Majori et Communitat. burgi de *Lanceſton*, alias *Downhevet.*

Lanceſton, alias Newport. Seneſcallo et Ballivo Cur. feod. Caſtri noſtri de *Lanceſton* parcel. Ducat. noſtri *Cornub.*

Ledbury. Ballivo ſuo burgi ſui de *Ledbury* in Com. necnon Judicibus Cur. ejuſdem burgi ſalutem.

Leiceſter. Majori, Ballivis, et Burgenſibus burgi ſui *Liec.*

Leiceſtr. Majori et Burgenſibus villæ *Leiceſtr.*

Lempſter, which I take for *Limſter.* Ballivis et Burgenſibus burgi ſui de *Lempſter.* in com. *Heref.* ſalutem.

Ballivo

Leoni. Ballivo & Burgenſibus de *Leoni* in com. ſalutem.

Leverpool. Majori & Aldermanno villæ ſuæ de *Leverpool* in com. *Lancaſtr.* ſalutem.

Lewes. Conſtabulario & Burgenſibus burgi ſui de *Lewes* in com. *Suſſex* ſalutem.

Lidford. Majori & Burgenſibus burgi de *Lidford.*

Lincoln civit. Majori, Vic. & Civibus civit. ſuæ *Lincoln.*

Lincoln. Ballivo, Decani & Capitul. Eccleſ. Catholic. beatæ *Mariæ Lincoln.* Curiæ ſuæ Boale infra clauſum ibidem.

Liskaret, alias *Liskerd.* Majori & Burgenſibus burgi de *Liskaret*, alias *Liskerd.*

Litchfield. Ballivis, Burgenſ. & Civibus civitat. *Litchfield.*

London. Majori, Aldermanno, ac Vic. *London*, & eorum cuilibet ſalutem.

Lond. Counters. Conſimilis.

Loſtwich. Majori et Burgenſibus burgi ſui de *Loſtwich* in com. Cornub. ſalutem.

Ludgerſhal Burgenſibus burgi ſui de *Ludgerſhal* in comit. *Wilts.* ſalutem.

Ludlow. Ballivo villæ de *Ludlow* in com. *Salop.*

Lugbargh: Ad Hundred de *H. B.* Milit. & Baronet. de *Lugbargh* in com.

Lugharnes. Ad Cur. *R. H.* Armig. de *Lugharnes* in com.

Lugwarden. Ballivis *T. B.* Armig. Manerii ſui de *Lugwarden* in com.

Lymington. Majori & Burgenſibus burgi ſui de *Lymington* in com. *Southampt.* ſalutem.

Lyn Epiſc. Majori villæ de *Lyn* Epiſc. in com.

Lyn Regis in Dorſet. Majori villæ noſtræ de *Lyn* Regis in com. *Dorſet.*

Lyn Regis in Norf. Majori et Recordatori villæ ſive burgi ſui de *Lyn* Regis in com. *Norf.* et eorum utrique.

Kendal. Ballivis Manerii noſtri de *Kendal* in com. *Weſtmerland.*

Kirby-Kendal. Aldermanno, Recordat. & Burgenſ. burgi de *Kirby-Kendal* in com. *Weſtmer.*

Kings-Norton. Seneſcallo, Ballivo & Sectatoribus Cur. Maner. de *Kings-Norton* in com. *Wigorn.* & eorum cuilibet.

De quo. Qu. *This being the late Queens, and before her death was ſtiled accordingly.*

Kingſton ſuper Hull. Majori & Vic. villæ noſtr. de *Kingſton* ſuper *Hull.*

Kingſton ſuper Tham. Ballivis & Seneſcal. Cur. villæ noſtr. de *Kingſton* ſuper *Thameſin*, & in abſentia dicti Seneſcal. Ballivis et Recordatori ejuſdem villæ ſive duobus eorum ſalutem.

Knaresborough. Seneſcallo Cur. Honoris de *Knaresborough* in com. *Ebor.* parcel. Ducat. noſtri *Lancaſtr.*

L.

Lancaſtr. CAncellario noſtro Com. Palatini noſtri *Lancaſtr.* vel ejus locum-tenent. ibidem ſalut. vobis mandamus quod per breve noſtrum, ſub ſigillo Com. Palatini noſtri præd. debet. conficiend. mand. fac. Vic. Com. præd. quod, *&c.*

Lancaſt. burgus. Majori et Ballivo burgi ſui *Lancaſtr.* in com. *Lancaſtr.*

Lanceſton, alias Downbevet. Majori et Communitat. burgi de *Lanceſton*, alias *Downhevet.*

Lanceſton, alias Newport. Seneſcallo et Ballivo Cur. feod. Caſtri noſtri de *Lanceſton* parcel. Ducat. noſtri *Cornub.*

Ledbury. Ballivo ſuo burgi ſui de *Ledbury* in Com. necnon Judicibus Cur. ejuſdem burgi ſalutem.

Leiceſter. Majori, Ballivis, et Burgenſibus burgi ſui *Liec.*

Leiceſtr. Majori et Burgenſibus villæ *Leiceſtr.*

Lempſter, which I take for *Lemſter.* Ballivis et Burgenſibus burgi ſui de *Lempſter.* in com. *Heref.* ſalutem.

Ballivo

Leoni. Ballivo & Burgenſibus de *Leoni* in com. ſalutem.

Leverpool. Majori & Aldermanno villæ ſuæ de *Leverpool* in com. *Lancaſtr.* ſalutem.

Lewes. Conſtabulario & Burgenſibus burgi ſui de *Lewes* in com. *Suſſex* ſalutem.

Lidford. Majori & Burgenſibus burgi de *Lidford.*

Lincoln civit. Majori, Vic. & Civibus civit. ſuæ *Lincoln.*

Lincoln. Ballivo, Decani & Capitul. Eccleſ. Catholic. beatæ *Mariæ Lincoln.* Curiæ ſuæ Boale infra clauſum ibidem.

Liskaret, alias *Liskerd.* Majori & Burgenſibus burgi de *Liskaret*, alias *Liskerd.*

Litchfield. Ballivis, Burgenſ. & Civibus civitat. *Litchfield.*

London. Majori, Aldermanno, ac Vic. *London*, & eorum cuilibet ſalutem.

Lond. Counters. Conſimilis.

Loſtwich. Majori et Burgenſibus burgi ſui de *Loſtwich* in com. Cornub. ſalutem.

Ludgerſhal Burgenſibus burgi ſui de *Ludgerſhal* in comit. *Wilts.* ſalutem.

Ludlow. Ballivo villæ de *Ludlow* in com. *Salop.*

Lugbargh: Ad Hundred de *H. B.* Milit. & Baronet. de *Lugbargh* in com.

Lugharnes. Ad Cur. *R. H.* Armig. de *Lugharnes* in com.

Lugwarden. Ballivis *T. B.* Armig. Manerii ſui de *Lugwarden* in com.

Lymington. Majori & Burgenſibus burgi ſui de *Lymington* in com. *Southampt.* ſalutem.

Lyn Epiſc. Majori villæ de *Lyn* Epiſc. in com.

Lyn Regis in Dorſet. Majori villæ noſtræ de *Lyn* Regis in com. *Dorſet.*

Lyn Regis in Norf. Majori et Recordatori villæ ſive burgi ſui de *Lyn* Regis in com. *Norf.* et eorum utrique.

M

Magor & Redwick. AD Cur. E. Comitis *Wigorn.* de *Magor.* et *Redwick* in com.

Maidenhead. Gardinario, Pontinariis, Burgenſ. & Communitat. villæ de *Maidenhead* in com. *Berks* ſalutem.

Maidſton. Majori vill. et paroch. de *Maidſton.*

Malden. Ballivis vill. ſuæ de *Malden* in com. *Eſſex*, ſalut.

Malmsbury. Aldermannis & Burgenſ. burgi ſui de *Malmsbury* in com. *Wilts.* ſalutem.

Manton. in com *Ebor.*

Mandevile. Seneſcallo & Ballivo honoris de *Mandevile* parcel. Ducat. Lancaſtr. ſalutem.

Marden. Ballivis ſuis Manerii de *Marden*, alias *Mawrden*, alias *Mawarthyn* in Com.

Marleberge. *Qu.* If not *Marlborough.*

Marleborough. Majori et Burgenſibus burgi ſive villæ de *Marleborough* in com. *Wilts.*

Marr. Mareſ. coram nobis. Marr. Mareſcal Cur. noſtræ coram nobis ſive ejus Deputat.

Marr. Hoſpic. Judicibus Cur. Virgæ hoſpitii noſtri, vel ejus Deputat. ibidem ſalutem.

Marſhals Court, or Verge-Court. Seneſcallo Cur. Mareſcal. hoſpitii noſtri, ac marr. noſtro ejuſdem hoſpitii, necnon Judicibus Cur. noſtræ Virgæ hoſpitii præd. & eorum Deputat. ibidem.

S. Martins le Grand London. Seneſcallo, Decani & Capituli Eccleſ. Collegiat. beati Petri Weſtm. Cur. libertatis ſuæ ſive præcinct. Sancti *Martini* le Grand *London*, & Conſtabular. ibidem ſalutem.

St. Mawes alias St. Marie's. Majori villæ ſuæ St. *Mawes* alias St. *Marie's* in com. *Cornub.* ſalutem.

Melcomb Regis. Majori vill. ſuæ de *Melcomb Regis.*

Weymouth & Melcomb Reg. Majori, Aldermannis, Ballivis, Burgenſibus & Communitat. villæ de *Weymouth*, & *Melcomb Regis* in comit. *Dorſet.*

Michael

Michael. Præpoſit. et Communitat. burgi ſui *Michaelis* in com. *Cornub.* ſalutem.

Middleton. Seneſcallo Cur. *Middleton* prope *Sittingborn.*

Midhurſt. Ballivo & Burgenſ. burgi ſui de *Midhurſt* in Com. *Suſſex.*

Mincholts. Burgenſibus burgi ſui de *Micholit* in com. *Somerſet.* ſalutem.

Monmouth. Majori & Ballivis Villæ ſuæ de *Monmouth.*

Morpeth. Ballivis & Burgenſ. burgi ſui de *Morpeth* in Com. *Northumb.*

Mynhead. Præpoſit. et Burgenſibus burgi de *Meynhead* in com. *Somerſet.* ſalutem.

N.

Newark ſuper Trent. MAjori & Aldermannis villæ de *Newark* ſuper *Trent* in com. *Notting.*

Newberry. Majori, Aldermannis, & Burgenſ. burgi de *Newberry* in Com *Berks.*

Newport. Majori & Ballivis vill. ſive burgi de *Newport* in Com. *Southampt.*

Newton. Ballivo et Burgenſibus burgi ſui de *Newton* in com. *Lancaſtr.*

Northampton. Majori & Ballivis vill. *Northampton* in com. *Northampton.*

Norwicus civit Majori, Aldermannis ac Vice-Com. civitatis *Norwici*, et eorum cuilibet.

Norwici. Majori & Vice-Comitibus civitat. *Norwici* in Com. *Norfolk.*

Nottingham. Majori, Aldermannis, & Vice-Comitibus villæ *Nottingham* in com. *Not.*

Novum Caſtrum ſuper Tinam. Majori, Aldermannis & Vic. villæ *Novi-Caſtri* ſuper Tinam in com. *Northumb.*

Novum Caſtrum ſubter Lin. Majori & Burgenſibus burgi ſui *Novi-Caſtri* ſubter Linam in com. *Staff.*

Newgate. Cuſtodi Priſonæ noſtræ de *Newgate*, & ejus

Deputat. ibidem ſalutem.

O.

Oſweſtry villa. BAllivis & Seneſcallo villæ de *Oſweſtry* in com. *Salop.* (*ſed. qu.*)

Oxford. Majori & Portmannis villæ de *Oxford* in com. *Suff.*

Oſweſter. Ballivis et Burgenſibus villæ de *Oſweſter.*

Oxon. civit. Majori & Ballivis civitatis *Oxon* in Com. *Oxon.* ſalutem.

Oxon univerſitas. Vice-Cancellario Academiæ *Oxon.*

Oreford in Com Suff. Majori et Portmannis villæ de *Oreford* ſalutem.

P.

Padſtow, alias Petrockſtow. MAjori & Burgenſibus burgi noſtri de *Padſtow* in Com. *Cornub.*

Park. Seneſcallo R. W. Ar. Manerii ſui de Park Lettys, alias Parte Lettys in Com.

Pawton. Seneſcallo & Ballivo Manerii ſive villæ de *Pawton* (*qu. ſi non Pawnton.*)

Pembrig. Ballivo et Seneſcallo villæ ſui burgi de *Pembrig* in com.

Penwith. Seneſcallo et Ballivo Hundred. et libertatis ſuæ de *Penwith* in com. *Cornub.*

Peterborough. Seneſcallo Cur. Decani & Capitul. Eccleſiæ Cathedral. Civitatis de Burgo Sancti *Petri*, in com. *Northampton.* & Burgenſibus ejuſdem Civitat. & eorum cuilibet.

Petersfield. Majori et Communitatibus Burgi ſui de *Petersfield* in Com. *Southamp.* ſalutem.

Pevenſey. Ballivo Libertat. Dom. Regis Ducat. ſui *Lancaſtr.* infra ripam ſuam de *Pevenſey* in com.

Pickering. Ballivis et Sectatoribus Cur. noſtræ de *Pickering* in com. *Ebor.*

Plymton. Majori, Ballivis et Burgenſibus burgi ſui de *Plymton* Maris in Com. *Devon.* ſalutem.

Plymouth

Plymouth. Majori & Communitati burgi ſui de *Plymouth* in com. *Devon.* ſalutem.

Pontfract. Majori vill. ſuæ *Pontfract.* in Com. *Ebor.* parcel. Ducat. ſui *Lancaſtr.*

Aliter. Ad Cur. honoris noſtri de *Pontfract.* in Com. *Ebor.* parcel. Ducat. *Lancaſtr.*

Pool. Majori vill. de *Pool*, & Seniori Ballivorum ejuſdem villæ.

Portland. Ad Cur. Manerii ſui de *Portland* in com. *Dorſet.*

Portpigham, or Porthigham, alias Weſtlow. Majori et Burgenſibus burgi ſui de *Porthigham*, alias *Weſtlow* in Com. *Cornub.*

Portſmouth. Majori, Aldermannis, & Burgenſibus villæ de *Portſmouth.*

Preſton Anderneſs. Majori & Ballivis vill. ſive burgi ſui de *Preſton* in *Lancaſtr.*

Pymbern. Ad Hundred *Willielm.* Comitis *Sarum* de *Pymbern* in com.

Cur. Palatii. Judicibus Cur. Palatii noſtri *Weſtminſt.* & eorum cuilibet.

Q.

Quinborough. MAjori & Burgenſibus burgi ſui de *Quinborough* in com. *Cane.*

R.

Reading. MAjori, Aldermannis & Burgenſibus burgi de *Reading* in Com. *Berks.* ſalutem.

Richmond. Aldermannis, Recordatori, & Burgenſ. burgi noſtri de *Richmond* in com. *Ebor.*

Rillaton. Seneſcallo, Decemar. & Præpoſit. ac liberis tenentibus Manerii ſui de *Rillaton* parcel. Ducat. ſui *Cornub.*

Rippon. Seneſcallo & Ballivis Libertat. Cur. Canon. nuper Canonicorum & capital. Eccleſ. Collegiat. de *Rippon* in com. *Ebor.* parcel. Ducat. noſtri *Lanc.*

Qu. If more *Rippons.*

Roſſen C. Majori, Aldermannis & Civibus civitatis noſtræ

ſtræ *Roffen* in com. *Canc.* ſalutem.

Roffen Palatium. Seneſcallo Reverendi in Chriſto Patris J. Epiſcop. *Roffen* Cur. Palatii ſui *Roffen.* ſalutem.

Rumney. Ballivis & Jurat. de *Rumney Marſh* in comitat. *Canc.*

Ryalton. Seneſcallo & Ballivo Manerii noſtri de *Ryalton* in com. *Cornub.* ſalutem.

Rygate. Ballivo & Burgenſibus burgi ſui de *Rygate* in Com. *Surrey.*

Rumſey. Majori et Recordatori, vel ejus Deputat. & Alderm. villæ de *Rumſey* infra & eorum cuilibet ſalutem.

S.

Salop, or Shrewsbury. BAllivis villæ noſtræ *Salop* in com. *Salop.* ſalutem.

Saltaſh. Majori & liberis Burgenſ. burgi ſui de *Saltaſh* in com. *Cornub.*

Civitat. Novæ Sarum. Ballivis libertatis Epiſc. *Sarum* civitatis novæ *Sarum.*

Sanctuar. in Weſtm. Scrutatori & Ballivo libertat. Sanctuarii, Decan. & Capitul. Eccleſiæ Collegiat. beati Petri Weſtm. in com. *Midd.* ſalutem.

Sarum vetus. Burgenſ. burgi ſui veteris *Sarum* in Com. *Wilts.*

Sarum nova ſede Epiſcopali vacante. Ballivis libertatis Decani & Capituli Eccleſiæ Cathedralis *Sarum* civitatis ſuæ novæ *Sarum*, ſede Epiſcopali jam vacante.

Le Savoy extra Temple-Bar. Ballivo libertatis Dom. Regis Ducat. ſui Lanc. apud le Strand in Com. *Midd.* ſalutem.

Scarborough. Ballivis Villæ noſtræ de *Scarborough*, ſive *Scarburg*, in Com. *Ebor.*

Shaftsburg. Majori & Burgenſibus burgi ſui de *Shaftsburg* in com. *Dorſet.*

Shafton. Majori, Recordatori, et Burgenſibus burgi de *Shafton* in Com. *Dorſet.*

Sheffield. Ad Cur. C. Com. *Salop* de *Sheffield* in com. ( )

Sherborn. Ad Cur. Hundred. de *Sherborn* in Com. *Dorſet.*

Store-

Shoreham. Conſtabulario & Burgenſibus burgi ſui de *Shoreham* in Com. *Lanc.*

Slaughter. Seneſcallo, Ballivo & liberis Sectatoribus libertatis Hundredi noſtri de *Slaughter* in Com. *Glouceſt.* ſalutem.

St. Fermins. Præpoſit. & Seneſcallo burgi de St. *Fermins* in com. *Cornub.*

Snaith. Ad Cur. noſtram de *Snaith* in com. ( )

Aliter. Ballivis & Sectatoribus Cur. Manerii noſtri de *Snaith* parcel Ducat. *Lanc.*

Southmoulton. Majori & capital. Burgenſibus villæ ſuæ *Southmoulton.*

Southold. Ballivis Villæ noſtræ de *Southold.*

Aliter. Ballivis & Burgenſibus libertat. villæ de *Southold.*

Southampt. Majori & Ballivis villæ ſuæ de *Southampt.*

vill. Aliter. Majori & Ballivis villæ noſtræ *Southamp.* Cur. ſuæ pedis pulverizat. ibidem. Necnon Cuſtod. Goal. noſtræ infra eandem villam ejuſdem Deputat. ibidem & eorum cuilibet.

Aliter. Vic. *Southamp.* necnon Cuſtod. Goal. noſtri caſtri Winton ac civit. noſtræ Winton.

Southwark Manr. Seneſcallo Cur. Libertat. reverendi in Chriſto Patris B. Winton Epiſcop. Manerii ſui de *Southwark* in com. *Surry.*

Southwark Burgus. Seneſcallo Cur. Libertat Majoris Communitat. ac civium civitatis *London* burgi ſui de *Southwark.*

Spiritualis Cur. J. S. Legum Doctori ac audientiæ reverendiſſimi in Chriſto Patris G. Archiepiſcopi *Cantuar.* totius *Angliæ* Primat. & Apoſtolicæ ſedis legali Cauſarum & negotiorum Cur. & auditori.

Stafford. Ballivis et Burgenſibus burgi de *Stafford.*

Stamford. Aldermannis & Burgenſibus villæ ſuæ de *Stamford* in com. *Lincoln.*

Stepleton. Seneſcallo Cur. T. C. Militis Manerii ſui de *Stepleton.* in Com. ( )

Stebunheath. Seneſcallo prænobilis T. W. Manerii ſui de *Stebunheath.*

Steyning. Conſtabulario & Burgenſibus burgi ſui de *Steyning* in Com. ( )

Stockbridge. Ballivo & Burgenſibus burgi ſui de *Stockbridge* in com. *Southampt.*

Stonclunſland Stannar. (Tali Dom.) Gardiano Stannar. Devon. & Cornub. Capitali Seneſcallo Ducat. in Cornub. aut ſuo Deputat. ibidem & præcipue ſibi aut ſuo Deputat. Seneſcallo infra Manerium de *Ston-Clunſland* parcel. Ducat. Cornub. præd. infra comitat. Cornub. ſalutem.

Le Strand. Ballivo libertatis Ducat. Lancaſtr. in le Strand in Com. noſtro *Midd.*

Stretford Eaſt, or Eaſt Stretf. Ballivis villæ ſuæ de Eaſt-*Stretford* in com. *Not.*

Sudbury. Majori, Aldermannis, Burgenſibus ac Seneſcallo burgi ſive villæ de *Sudbury* in com. Suff. & eorum cuilibet ſalutem.

Supremis Commiſſionar. Cantuarien. Provinciæ. Reverendiſſimo in Chriſto Patri G. Providentia Divina Cantuar. Archiepiſc. Primat. & Metropolitano ac aliis ſupremis Commiſſionar. Regis ad Cauſas Eccleſiaſticas inter alia ſub magno ſigillo *Angliæ* legitime & ſufficienter authoritat.

Sutton Coldfield. Gardino et Societati villæ Reg. de *Sutton Coldfield* ſalutem.

T.

Talboth. BAllivo Cur. de *Talboth* villæ de Lenn. Epiſc. in Com. ( )

Tamwarth. Ballivis vill. noſtræ de *Tamworth* in com. *Staford.*

Taveſtock. Seneſcallo ſive Ballivo F. comit. *Bedf.* libertat. ſuæ de *Taveſtock.*

Taunton. Ballivo reverend. in Chriſto Patr. T. Epiſcopi Winton Libertat. ſuæ de *Taunton* & *Taunton-Dean.*

Tewks-

Tewskburgh. Ballivo, Burgenſibus & Communitat. burgi ſui de *Tewskburgh.*

Thackſted. Majori, Ballivis & Communitat. burgi de *Thackſted* in Com. *Eſſex*, & eorum cuilibet. ſalutem.

Thetford. T. C. Comit. Capitali Seneſcallo villæ noſtræ de *Thetford* parcel. Ducat. noſtri *Lancaſtr.* vel ejus Deputat. ibidem.

Aliter. Majori & Recordatori burgi noſtri de *Thetford* in Com. *Norf.*

Thremalton. E. H. Præclari ordinis Garterii Milit. Dom. Haſting de Loughborough Capital. Seneſcallo noſtro Ducat. noſtri Cornub. necnon feod. & Manerii de *Thremalton* ſive ejus Deputat. ibidem ſalutem.

Thusk. Burgenſibus burgi ſui de *Thusk* in com. *Ebor.*

Tickhil. Ad Cur. noſtram honoris noſtri de *Tickhil* in com. Ebor. parcel. Ducat. ſui *Lancaſtr.*

Torrington magna. Majori, Aldermannis, & Burgenſibus burgi ſive villæ de *Torrington* magna.

Aliter. Majori, Aldermannis, Capital. Burgenſ. & Seneſcallo burgi ſive villæ de *Torrington* magna in comit. *Devon.*

Totnes. Majori & Burgenſibus burgi de *Totnes* et eorum cuilibet.

Trebenin, alias Boſſiny. Majori & Burgenſibus burgi ſui de *Trebenin*, alias *Boſſini* in Com. *Cornub.*

Trigoni. Seneſcallo & Ballivo H. P. Manerii ſui de *Trigoni* P. in Com. *Cornub.*

Tregony. Ad Cur. A. W. Armig. de *Tregony* in comitat. *Cornub.*

Trellock. Majori & Ballivis W. Comitis *Pembrook* villæ ſuæ de *Trellock* in com. *Cornub.*

Trennaton. Chariſſimo Conſanguineo ac prædilecto & fideli Conſiliario noſtro Willielmo Comiti Pembrook, Domino Camerario hoſpitii noſtri, præ-

nobilis

nobilis ordinis Garterii Milit. Capital. Seneſcallo Ducat. noſtri *Cornub.* Necnon feod. et Manerii de *Trennaton* in com. *Cornub.* ſive ejus Deputat. ſalutem.

Truro. Majori et Burgenſibus burgi ſui de *Truro* in com. *Cornub.*

Turnan-Hall. Ad Cur. W. B. Manerii ſui de *Turnam-Hall* in Comitat.

Turris London. Willielmo Ward Militi Conſtabular. locumtenenti *Turris London.* Necnon Seneſcallo Cur. ejuſdem & eorum utrique.

V.

Vierge, or Marſhalſey-Court. SEneſcallo Cur. Mareſci Hoſpitii noſtri: Ac Mareſcallo noſtro ejuſdem hoſpitii noſtri: Necnon Judicibus Cur. noſtræ *Vierge*, et eorum cuilibet.

Uske. Præpoſitis & Ballivis villæ ſive burgi de *Uske.*

W.

Waitel. Cur. BAllivis et Sectatoribus Cur. ſuæ de *Waitel.*

Wakefield. Ad Cur. Manerii noſtri de *Wakefield* in Com.

Walden. Ebor. Theſaur. et Camerar. vill. noſtræ de *Walden* in com. *Eſſex.*

Wallingford. Majori, Aldermannis et Recordatori burgi ſive vill. de *Wallingford* in Com. *Berks.* et eorum cuilibet ſalutem.

Walſal. Ballivis Manerii ſui de *Walſal* in com. ( ) ſalutem.

Warwick. Ballivis & Recordatori burgi noſtri *Warwici* in Com. *War.wick.*

Weymouth, & Melcomb Regis. Majori, Aldermannis, Ballivis, Burgenſ. & Communitat. villæ de *Weymouth* et *Melcomb Regis* in Com. *Dorſet.*

Wellen Cur. Epiſc. Seneſcallo ſive Ballivo Cur. Reverendi in Chriſto Patris J. Bathon. & Wellen. Epiſcopi.

Wellen. Burgus. Seneſcallo ſive Ballivo Cur. noſtræ de placit.

ad

ad reverend. in Chriſto Patrem Dom. J. permiſſione Divina Bathon. & Wellen. Epiſc. pertin. ſive conceſ. tent. apud Guild-Hall infra burgum & villam noſtram de Welles in Com. noſtro *Somerſet.*

Wenlock. Ballivo & Seneſcallo villæ libert. de *Wenlock* mag. in com. *Salop.*

Wentworth Liberty near *London.* Ballivo libertatis Thomæ Dm. *Wentworth* in Com. *Midd.* Enquire if they be diſtinct under the ſame ſtile lying in eodem com.

Weſtbich. Cuſtod.

Weſtburg. Majori & Burgenſ. burgi ſui de *Weſtburg* in com. ſalutem.

Weſtm. Civit. Ballivo libertat. Decani & capituli Eccleſiæ Collegiat. beati Petri Weſtm.

Weſtmin. Dean and Chapter. Ballivo Libertat. Decani & Capituli Eccleſiæ Collegiat. beati Petri Weſtm.

Whitchurch. Majori & Communitatibus burgi ſui de *Whitchurch* in com. *Southamp.*

Wickome. Ball. *Wickome* in Com. Buckingham. Enquire *Chipping-Wickome* before.

Wigmore. Seneſcallo & Ballivo villæ ſive burgi de *Wigmore* in Com. *Heref.* ſalutem.

Wigorn. Majori & Aldermanno burgi ſui de *Wigorn.* in com *Wigorn.*

Wike-Regis. Ad Cur. Dom. Regis Manerii ſui de *Wike-Regis* in Com. ( )

Wilton ſuper Wian. Ballivis A. B. Armig. Manerii ſive Dom. de *Wilton* ſuper Wian in Com. ( )

Winchelſea. Majori Jurat. & Communitat. antiquæ villæ de *Winchelſea* unius quinque Portuum noſtrorum ſalutem.

Nova Windſor. Majori, Ballivis & Burgenſibus villæ ſive burgi noſtri de *Nova-Windſor* in Com. *Berks.*

Aliter. Majori, Aldermannis, Ballivis ac Subſeneſcallo burgi ſui de *Nova-Windſor*, & eorum cuilibet.

Caſtrum

Caſtrum Windſor. T. C. Conſtabular. Honoris & Caſtri ſui de *Windſor* ac Cuſtod. Foreſtæ ejuſdem, aut ejus locum ten. ſeu ejus Deputat. ibidem.

Aliter. Carolo Comiti Nottingham. Baron. Howard de Effingham, præclari ordinis Garterii Milit. Magno Admirallo Angliæ, Conſtabular. honoris caſtri noſtri de *Windſor* ac Cuſtod. totius Foreſt. ibidem, Janitori extra portum dicti caſtri ſalutem.

Winton civit. Majori, Recordatori vel ejus Deputat. & Ball. civitat. noſtræ *Winton* et eorum cuilibet.

Witterol. Ballivo Cur. noſtræ *Witterol* ſalutem.

Woodſtock. Majori villæ ſuæ de Nova *Woodſtock.*

Aliter. Majori & Communitat. burgi de Nova *Woodſtock.*

Worceſter. Majori, Recordatori, & Aldermannis civitat. noſtræ *Worceſter* ſalutem.

Worham. Majori & Burgenſibus burgi ſui de *Worham* in Com. *Dorſet.*

Wormlow. Ballivis A. Dom. Chandos & E. B. R. Manerii ſive Hundred de *Wormlow* in com. ( )

Wotlow. Ballivis Villæ de *Wotlow.*

Wotton-Baſſet. Majori et Burgenſ. burgi de *Wotton-Baſſet* in com. *Wilts.* et eorum cuilibet.

Writtel. Ballivis et Sectatoribus Cur. ſuæ de *Writtel* in com. ( )

Wye. Seneſcallo et Ballivo H. C. Nobil. Ordinis Garterii Milit. Dom. Hunſdon Regalis Manerii ſui de *Wye* in com. Kanc. et eorum cuilibet ſalutem.

Wigorn. civit. Ballivis, Aldermannis et Camerar. civitat. noſtræ *Wigorn.*

THeſe are the ſeveral Titles of ſeveral Corporations which happily may ſome of them alter in ſome particular, by reaſon of renewing their Charters, and having larger Grants, by which they are incorporated anew, and which may alter the Title, of which the Attorney muſt (the beſt he may) inform himſelf. The beſt way to be informed of the true and certain directions, is to repair to the Curſitor of the County wherein the Corporation is.

SOme few Rules have been omitted, which concern what hath been premiſed concerning Actions of Debt, and may be of much uſe in other Actions; which take as follows: And firſt of Amerciaments, and of the Eſtreating of them.

Note, That if the party be arreſted, and at the return of the Writ the Sheriff return (that he hath taken the body of the Defendent, which he hath ready, *&c.*) and yet the Defendent * appears not, you may, if the Sheriff be ſo content, take the Bond of appearance given to the High-Sheriff, and have it aſſigned to you, and ſo you ſhall be enabled to ſue the Defendent and his Sureties in the High-Sheriff's name; Or if you will not ſo do, or the Sheriff will not let you have the Bond, then you muſt give the Sheriff a day by Rule to bring in the body, *&c.* in the Prothonotarie's Bills of Pleas, which if he do not, he ſhall be amerced, and then you may ſue out an *Habeas Corpus* with the Prothonotarie's Clerk; and if he bring him not in upon that, you ſhall continue amercing of him; and in caſe the Sheriff return that he is, *Languidus in perſona*, that is to ſay, that he is ſo ſick he cannot

* *In this caſe, upon ſuch a Return, you may bring an Action upon the caſe againſt the Sheriff for his falſe Return; for if he hath taken a Bail-Bond, according to the Statute he ought to make his Return accordingly.*

cannot bring him; then if it be found a delay, iſſues forth the *Duces tecum, &c.* and ſtill upon the Amerciament you ſhall increaſe Iſſues, until you force an appearance; but you may have your *Habeas Corpus*, and alſo give your Rules for amercing the Sheriff as well in the Philizer's, as in the Prothonotarie's Office.

When you come to the eſtreating of your Amerciaments, you muſt ſee them entred with the Philizer or * Prothonotary where the Rule was given; and then the Clerk of the Warrants, through whoſe Office the Prothonotarie's Rolls paſs, whereby he may take notice of the Sheriff his *Miſericordia*, or being in mercy upon Judgments, will certifie the Amerciaments, as he doth all other of that nature of courſe to the Exchequer: but if it be in the Philizer's Office, you muſt get a Certificate from the Philizer to the Clerk of the Warrants, who will return it into the *Exchequer*, where the Sheriff when he paſſeth his account, will be enforced to pay it.

* *If in the Prothonotarie's remembrance, you muſt carry it to the* Clerk *of the Warrants, and get him to certifie it into the* Exchequer.

Now if the Sheriff who made the Arreſt be out of his Office, before you make your proceed or have appearance, you ſhall have a Writ called a *Diſtringas nuper Vicecomitem*, that is to ſay, a deſtraining of the late Sheriff, which writ muſt be made out of that Office whence the laſt proceedings were had.

"Note, it is the courſe of this Court, if the Debt "be 20 *l.* or above, the Plaintiff may ſtand upon ſpe- "cial Bail, and therefore if the Defendent be arreſt- "ed upon a Debt of 20 *l.* or above, or upon an Acti- "on of the Caſe, where 20 *l.* damages or above are "laid, though he did put in good Bail for his appear- "ance, and would appear by an Attorney; yet you "may go on with your Amerciaments againſt the "Sheriff, and take out *Habeas corpus*, and *Alias habeas*

"*beas corpus ad infinitum*, till the Defendent ſhall "come with two ſufficient Sureties, ſuch as the "Plaintiff's Attorney ſhall accept of; and they to-"gether with the Philizer go before one of the "Judges, and there the two Sureties are bound in a "Sum of Money, that if the Defendent be condemn-"ed in the Suit againſt him, he ſhall pay the debt or "damages recovered againſt him, or render his body "to priſon; ſo that if the Defendent be caſt in the A-"ction, and Judgment be entred againſt him, if the "Bail ſhall at the return of the Execution bring in "the body of the Defendent, who is ready to ren-"der himſelf to priſon, then is the Bail diſcharged.

"But if the Defendent do not render himſelf to "priſon, nor the Bail bring in his body, then the "Plaintiff may ſue out a *Capias ad ſatisfaciendum* a-"gainſt the Defendent, and *Non eſt inventus* being re-"turned thereupon, and the ſame being filed with "the *Cuſtos Brevium*, there ſhall iſſue forth *Scire faci-"as* againſt the Bail, and they be thereby compelled "to ſatisfie the Debt and Coſts, awarded againſt "him for whom they are Bail.

"And in ſuch caſes, where the Debt is 20 *l.* or a-"bove as aforeſaid, if the Defendent gives bond for "his appearance, and at the day doth appear with "the Philizer, by his Attorney, and the Sheriff re-"turns a *Cepi Corpus*, upon which the Plaintiff not ac-"cepting of the appearance hath an *Habeas Corpus*: "whereupon the Sheriff being amerced, aſſigns over "his Bail Bond to the Plaintiff to ſue, who puts it in "ſuite, and the Defendent in the bail-bond being ar-"reſted, the Plaintiff declares thereupon, if the De-"fendent ſhall now plead *comparuit ad diem*, and the "Plaintiff reply *Quod null. tiel. Record*, this Plea of "the Defendent is not good, becauſe the Plaintiff "ſhould have had ſpecial bail, and only common

Bail

"Bail was offered, ſo that *Non comparuit* and the Iſ-
"ſue ſhall go for the Plaintiff.

"If a man be arreſted in the Vacation upon a *Clau-*
"*ſum fregit*, and the Term following the Plaintiff
"declares in Caſe ſpecial, the Defendent ſhall im-
"parle over of courſe.

"But if the writ whereupon the Defendent is ar-
"reſted be ſpecial, in caſe returnable the firſt return
"of the Term following, the Defendent ſhall anſwer
"the ſame Term, by the courſe of the Court.

"Generally, the ſame Term the Defendent ap-
"pears and takes a Declaration, he ſhall imparle till
"the next Term, except in ſome particular caſes.

"And note, the Defendent may be arreſted upon
"a *Clauſum fregit*, and the Plaintiff may declare in
"caſe, or treſpaſs, and ſometimes in debt.

"But if the Party be arreſted upon a writ in debt,
"the Plaintiff cannot declare in treſpaſs, or caſe, or
"any other Action, but debt only.

Note, that every Attorney, Clerk, or Officer of the Court, may have an Attachment of Priviledge, which is to be made in one of the Prothonotaries Offices, and muſt be made returnable at a day certain, and is as effectual on their behalf as an Original; for if the Debt be fineable, you ſave the Fine; and although the debt be ſmall, or that it be any other Action, yet ſhall you hold him to ſpecial Bail, and upon a *Cepi* returned, you may proceed to amerce the Sheriff, as in other Proceſſes.

Note, that if you cannot arreſt the Party upon your firſt proceſs taken from the Philizer, you muſt be ſure to ſee them carefully continued, which coſts you four pence for each Term, from the time of taking them forth; for if upon a ſecond writ the Defendent find your writ diſcontinued, he may enter a diſcontinuance, and the want of any one continuance is Error at the time of the Judgment.

I

I think a *non-continuance* is not help'd by any Statute before the 21 *Jac.* but if Judgment be given upon default, and a continuance be wanting, and Error brought, it ſhall not be amended upon motion, as it was adjudged in *Tr.* 1652. *C. B.* in *Breck*'s caſe.

Note, that when you deliver unto the Defendant his Attorney the Copy of your Declaration, you are to ſhew your Bond, Bill, Will, Letters of Adminiſtration, Indenture, or other Writings under Seal, whereby you intitle your ſelf, for that you have (*a profert hic in curia*) of theſe writings in your Declaration, which is in ſubſtance an acknowledgment of them to be brought into Court; but if the Defendant's Attorney receive the Declaration, and then call not for ſight or hearing of the Bond, *&c.* and after pleads or takes an Imparlance, you are not bound afterwards to ſhew it him.

Obſerve further, that if you bring your Action againſt two or more, for one Debt due upon one ſpecialty, when you draw your *præcipe* for * the Curſitor, take heed whether your ſpecialty be joyntly or ſeverally; jointly thus, We bind us, our Heirs, Executors, *&c.* or, *Obligamus nos hæredes*, &c. not having therein the words, Either of us; then your Original muſt be, and ſo your Declaration (that they render to the Plaintiff ſo much Money, *&c.*) but if the ſpecialty be, as is moſt uſually, jointly and ſeverally, then muſt your *Præcipe* be ſeveral, and then muſt you make delivery, and enter ſo many ſeveral Declarations as there are Defendants in your Writ.

**Otherwiſe it is pleadable in abatement.*

Note, that in Actions of Debt upon *Emiſſet*, for Wares or Merchandizes, or other things; or upon *Mutuatus*, for Money or other things lent, or upon an *Inſimul computaſſet*, Actions of Treſpaſs, Battery, or upon the Caſe, *&c.* you are not tyed to lay the certain day, but you may lay it any time after the cauſe

of Action accrued, and before the *Teste* of your Original, but in an *Ejectione firmæ*; the date of the Demiſe muſt be your guide, from which you muſt not vary, if there be a Leaſe ſealed.

Note, that as I ſaid before, there are ſome Actions real, ſome perſonal, ſome mixt, whereof ſome are local, as tyed to be laid in the County where the cauſe of Action accrued; every perſonal Action is an Action of Debt, *Treſpaſs, Covenant, Battery, &c. and may be commenced and laid in any County whatſoever, according as the Plaintiff pleaſeth, although both the Plaintiff and Defendent do dwell out of the ſame; but every real and mixt Action is to be laid in the ſame County, where the cauſe of the ſaid Action ariſes as before, or where the Lands and Tenements do lye, *&c.*

Accounts of Treſpaſs quare clauſum fregit muſt be local.

The like courſe muſt be taken to continue an Iſſue joyned and entred upon the Roll from Term to Term, as before was ſhewed in the caſe of Imparlances.

Note, that when you declare upon ſeveral ſpecialties in the cloſe of your Declaration upon the *profert hic in cur.* you muſt mention their ſeveral dates, but ſome think it not neceſſary.

Note alſo, that if ſeveral Defendants appear by one Attorney, who are bound in a Bond joyntly and ſeverally, if they declare ſeverally againſt them, yet the condition muſt be recited but in one of the Declarations; but if they appear by ſeveral Attorneys, you muſt inſert the Condition to the Declaration, in every of them.

And note, that in many of the fore-going Actions of Debt, you ſhall do very well, and it is the ſafeſt way for your Client to make Actions of the Caſe of them by *Indebitat. aſſumpſit*, where if you prove the Money lent, or Wares delivered, *&c.* the Law implies

plies

plyes the promiſe, and in that caſe the Defendant is barred from waging his Law.

Note, for Rent an action upon the caſe will not lye.

And note further, that if you bring an Action of Debt againſt one within Age, he may plead in Bar that he is * within Age; but in caſe it be for Neceſſaries, as meat, drink, apparel, &c. there it * is no Bar to the Plaintiff.

*For the cauſe of Action ariſing when he was within age.

*That he was within age at the time the contract.

And in caſe any one is ſued who is within age, he muſt * defend himſelf by his Guardian; and if he will ſue, it muſt be by his *Prochein amy*, or it may be *per Guardian*, Hut. 92.

*See for this Hut. 92. he cannot defend per Prochein amy, *ibid.*

Note, that you may ſue an * Heir as well as the Executor or Adminiſtrator for the Debt due by the Obligor; but in caſe you cannot find any Lands to deſcend unto him, he pleading *Riens per deſcent*, (that is, hath nothing deſcended unto him) he ſhall not be charged.

*Note, if by the ſpecialty the Heir be named, otherwiſe not.

If Money be payable upon demand, there in that caſe it muſt be demanded before you can ſue, and the Plaintiff muſt lay a Demand in his Declaration, and the Action accrues by vertue of that Demand, except upon a Bond.

Note further, the Law allows of diſtinctions in theſe caſes; for when the Promiſe ariſeth upon a Precedent Debt, *licet ſæpius requiſit.* is ſufficient.

Note, that if a man ſhall bring an Action either upon Bond, Bill, or otherwiſe, upon which he formerly had Judgment, the Defendant may plead the former Judgment in Bar, and it may be held good.

Note how and to what caſes you may plead the Statute of *Limitations*, which will guide you to bring your Actions within the time limited, or cauſe you to forbear bringing them at all, all Acti-

ons of Debts Account, Detinue, Treſpaſs, Replevin, and all other Actions of the Caſe, unleſs for words, muſt be put in Suit within ſix years after the cauſe of Action; all Actions of Aſſault, and Battery, and Impriſonment, are to be put in ſuit within four years after the cauſe of Action; and all Actions of the Caſe for ſcandalous words, within two years after the words ſpoken, if in any of theſe caſes they be brought after the time limited as above, the Statute of 21 *Jac.* pleaded, is a good Plea in Bar to any of them, no time limited for Specialties, *Vid.* 2. *Inſt.* 107.

There are many diſtinctions hereupon to be made, too large to be here recited. See Banks *his reading upon this Statute.*

If a man arreſt another, or cauſe him to be arreſted in another man's name, without the conſent of the Party in whoſe name he is arreſted, the Statute gives an Action of Debt to the Party ſo arreſted.

This is *per* Stat. 18 *E.* and it is reſtrained to arreſts out of particular Courts mentioned in the ſame Statute.

An Action of Debt lyes by the Stat. of 2 *Ed.* 6. *cap.* 13. for a Parſon againſt his Pariſhioners for not ſetting out of Tythes, upon which Action the Parſon ſhall recover the treble value of the Tythes ſo carried away untythed. See for this good learning in 2 *Inſt.* 648, *&c.* cc.

* *The forfeiture is* 10 l.

An Action of * Debt by the Stat. of 3 *H.* 8. *cap.* 30. lyes againſt an Attorney, for not filing of Warrants of Attorney, in the Cauſes he is towards.

Where no place of payment is ſet down in a Bond, there the Obligor muſt be inforced to find out his Obligee to pay him the Money. See Reſtrictions thereupon, 1 *Inſt.*

We now proceed to Actions of Detinue, wherein we ſhall need to ſay the leſs, for that the ſame Rules that have been given in Actions of Debt, either

ther in relation to the Proceſs or manner of declaring, do hold in this, the one being in the *Debet* and *Detinet*, and the other in the *Detinet* only: And this Action properly lyes where a man delivers Goods or Chattels to another to keep, and the party to whom they were ſo delivered, refuſes to re-deliver them.

And obſerve, that in this Action of detinue you ought to aſcertain the thing, as a Horſe, Cow, or other Cattel or Chattel, naming them, and making them certain; for that the Plaintiff is to recover the things detained, and therefore it muſt be ſo certain, as it may be known; for money delivered in a Bag an Action of Detinue lyes not, but an Action of Account; and your Original in this Action runs thus:

REX, &c. *Vic. Eſſex ſalutem. Pr. J. G. nuper de L. in Com. H. Yeoman, quod juſte & ſine dilatione reddat. T. B. unam vaccam quam ipſe injuſte detinet*, &c.

If for a man's Evidences of his Land, in a Box or Bag ſealed up, in which caſe alſo an Action of Detinue lyes, then the Writ runs thus:

QUod *juſte & ſine dilatione reddat unam pixidem cum chartis, ſcriptis & aliis minumentis in eadem pixide content. quæ ei injuſte detinet.* &c.

The Defendant hath not in this Action that variety of Plea as before in Debt, the moſt uſual Plea being, that he detains not the thing ſued for; and upon this he puts himſelf upon the Country to be tryed, and the Plaintiff in like manner, *&c.*

Note that in this Caſe, if the Plaintiff have a Verdict, his Judgment is a Recovery of the thing detained, or the value thereof; in which caſe, as alſo where the Judgment is had by default for want of

Note this is in caſe the Jury find not the value upon the Verdict.

pleading, there is after the Judgment had, a Writ of Enquiry awarded, to enquire of the value of the thing detained: upon the return of which Writ of Enquiry, what value the Jury find the thing of, and what damages they give him for the Detainer of it, is, together with increase of Costs, entred up for Judgment.

Note, that a man may wage his Law in an Action of Detinue, as formerly in Debt was shewed, wherein the same course, for the manner of the Wager of the Law, is to be observed as before.

Note, this is but in some cases, 1 Inst. 295

But it is otherwise, in case you declare for one Evidence in special, delivered by the Plaintiff to the Defendant; in this case the Defendant shall not wage his Law, *Vid. Bolstrod*'s Reports *fol.* 29. some special Case concerning Detinue.

Note, that in case of Evidences detained, it is not proper for the Executor, nor hath he any right to this Action, but the Heir who is to have the Land.

Note, that if it be of any thing delivered to be kept, whether by the immediate party that brings the Action, or his Father, Ancestor, *&c.* properly this Action lyes if detained, but otherwise an Action of Trover and Conversion.

In the next place we come to Actions of Account, *Vide Co. Lit.* 172.

THis Action lyes upon several occasions, as against one that is Guardian in Socage, against one as Receiver of Moneys, either by way of Rents or otherwise, or as Bailiff of an Office, or as Bailiff in general: In all which Cases you must be sure to frame your Action rightly, by informing your self for what time he continued Bayliff, Receiver, *&c.* of what his charge was, and what it amounts unto, and

and when he entred upon ſuch his charge.

To begin with Guardian in *Socage*, your Proceſs are by Summons, * *Capias ad computand.* &c. and you declare upon the Statute of *Marlebridge, cap.* 17. Quare cum de communi concilio Regni Dom. Regis *Anglia* proviſum ſit. Quod cuſtodes terrarum & tenement. quæ tenent in Socagio hæred. ter. & tenement. illorum cum ad plenam ætatem pervenerit, reddant rationabilem computum ſuum de exitibus de ter. & tenementis illis provenientibus de tempore, quo cuſtodiam illam habuerunt ratione minoris ætatis hæred. præd. idem B. præfat. A. rationabilem computum de exitibus provenientibus de terris & tenementis ipſius A. in N. quæ tenentur in Socagio & quorum cuſtodiam idem B. habuit & comp. dum A. infra ætat. fuit, reddere contra dixit, *&c.* This full age is 14 years, *Co. Lit.* 89.

* *An account with Guardian in Socage did lye at Common-Law, & the Statute is but in affirm.* Co. Lit. 89. *Common giſt with Garden in Socage*, Co. Lit. 89. a. *Vide* the reaſon 2 *Inſt.* 380.

The intendment of Bailiff is one that hath the adminiſtration and charge of Lands, Goods, or Chattels, to make the beſt benefit for the Owner; againſt this perſon properly lyes an Action of Account, for the profits which have been made or raiſed, during the time he hath had the care of them, *Vid.* 2 *Inſt.* 380.

And obſerve this, that a Bailiff may be charged to account, and accordingly doth account, and upon account if nothing doth appear to be arrear in his hands, but rather the Plaintiff indebted to him; in which caſe the Bailiff ſhall bring his Action of Debt for the Surpluſage of what he hath expended and laid out over and above his Receits.

If I appoint a man to receive money to my uſe, to

render me an account, I shall have my Action of account against him for the said moneys, he also having his reasonable Expences and Disbursements. Note, *Co. Lit.* 172. *a.* it must be between Merchant & Merchant. *ib.*

Where a man declares against one as Receiver of moneys, he must ascertain by whose hands the money was received, which lyes not against a Bayliff; * and if the Receit be from any hands, other than the party Plaintiff, the Defendant shall not wage his Law, but if it be alledged to be received by his own hands, and not by another man's hands, in this case the Defendant may wage his Law.

* *Or his wife, or his Commoigne* 1 Inst. 295

"If Money be received by the Wife, the Husband "may be charged in the Declaration, as his own Re- "ceipt, and so the Law is.

Where there be two Coparceners in Merchandize, that occupy and merchandize in common, by the Statute one shall have his Action of Account against the other, they being both named Merchants, *Co. Lit.* 172. 186. *a.*

Where there be two Joynt-Tenants, and the one makes the other Bailiff of his moiety, in this case, he that makes the Bailiff may bring his Action of Account.

The Executors of a Bailiff or Receiver are not chargeable with an account. Executor at the Common-Law could not have account, but the Stat. *W.* 2. *cap.* 23. gave the Action of account to Executor, the Stat. 25 *E.* 3. *cap.* 5. to Executor of Executors, and Stat. 31 *E.* 3. *cap.* 11. to Administrators, *Co. Lit.* 89. *b.*

An account may be brought against the Collectors for money given to the use of the Poor.

Note, that if a man brings his Action of account against one as Bailiff, and the Defendant to his Action

on pleads that he was never his Bailiff to render an account, *&c.* and upon that Iſſue joyned, and upon the Tryal a Verdict for the Plaintiff; in ſuch caſe the Judgment is, that the Defendant ſhall account with the Plaintiff of the time and profits aforeſaid, *&c.* and that he be in mercy, becauſe he did not ſooner account.

Upon this Verdict and Judgment, the Court aſſigns Auditors, before whom the Defendant is to account upon ſuch a day or time, as the Auditors ſhall appoint to hear the Account, and in the *interim*, the party either puts in Bail to account, or otherwiſe ſtands committed to the Fleet.

NOte, that if the Defendant acknowledge the Action, and that there be Auditors aſſigned by the Court, in this caſe he ſhall not be inforced to put in Bail.

There are two Pleas moſt uſual in theſe Actions of Account; the one is, *Quod nunquam fuit Receptor ejuſdem quer.* And the other, *Quod plene computavit*, &c.

Note, that the Auditors aſſigned by the Court, have power upon his accounting, to make him allowance of what reaſonable diſburſements and charges he brings in as laid out; and if after that the Defendant be found over and above in arrear by the Auditors, the Plaintiff may bring his Action of Debt, to which, as is before ſaid, the Defendant ſhall not wage his Law.

In an Action of Account a man may plead doubly, as where he ſtands charged to have received ſeveral moneys, ſeveral times from divers perſons, there he may plead as to part (that he ſtood not Bailiff, *&c.*) and as for the other part, (*that he hath fully accounted*, &c.) Upon the joyning of which Iſſue, it being double, you ſay, therefore as to the trying

as

as well of this Iſſue, as the aforeſaid other Iſſue formerly joyned, command is given to the Sheriff, *&c.*

Note, that an Action of Account lyes againſt a Church-Warden after he is out of Office, by the ſucceeding Church-Warden to be brought.

1 *Inſt.* 89. *b.* 90. Where an Infant within the age of 14 years, being ſeized of Lands in Socage-Tenure, a ſtranger enters within the Lands of the Infant, and takes the profits of the ſame, though he be not the next of Kindred, nor Guardian in Socage, yet the Infant ſhall charge him as Guardian in Socage; and it is no plea for him to deny that he is the next of Kindred, but he muſt anſwer to the taking of the profits, the Writ being, that he ſhould render his reaſonable account of the Iſſues and profits, coming of the Lands and Tenements in S. which are held in Socage, *&c.*

Note, that if it be for the profits of the Land, *for the time after the Infant is come to 14 years of age, he muſt be ſued as Bailiff, and not as Guardian.

1 Inſt. 90. a.

Note alſo, that if any man have cauſe of Action of Account, againſt any as Receiver and Bailiff, and dye, his Executors ſhall have this Action.

This Action may likewiſe be brought in the County where the cauſe of Action ariſes, and if ſo brought it may be removed into the Common-Bench at the Suit of the Plaintiff by a *Pone*, without ſhewing the cauſe in the Writ; but it ſhall not be removed at the Suit of the Defendent, without ſhewing cauſe in the Writ of *Pone* as if the Defendant have Releaſe, and then it ſhall be named in the *Pone*, &c.

An Apprentice ſhall not be charged with an Action of Account; but if a man have a Servant whom he commands to receive money, the Maſter ſhall have a Writ of Account againſt him, if he were his Receiver.

The

The Fees incident to this action, and the proceedings thereupon, follow in a Table amongst others.

Actions upon the Case.

THese Actions are very numerous, and grounded upon several occasions, as for scandalous words, for promises not performed, for special Nusances, *&c.* The Process upon them are, first an Original, and then by the way of *Capias*, if you can arrest upon the first process; if not, then you may proceed to the Outlawry, as before in Debt, only the charge will be more in respect of the length of your Process; and for return of those Writs, you must return, *Quod defend. nihil habet in Balliva mea unde attachiari possit*: This for the Original: And for the *Capias* and other process, *Quod defendens non est inventus in Balliva mea.*

In Actions of the Case for words, you must carefully observe what the nature of the words are, what they import, the manner of speaking of them, and what the party Plaintiff may be any ways damnified by the speaking of them, what his Credit was, and how impaired, and take the whole words as near as you can; and before you bring your Action, let the Witnesses set down the words as they were spoken, and as they will be able to prove them, and the time and place when and where they were spoken, and before whom: This Action oftentimes miscarries, by reason the Attorneys weigh not well whether the words be actionable or not, and many times, though some part of the words taken by themselves may be actionable, yet the subsequent words may qualifie the sence of the precedent; as where a man says of another, that he is a Thief, and hath stoll'n something of small or no value; For generally, where one stands charged by words

words for any Theft, which is only criminal, and not capital, there the party Plaintiff ſhall never have Judgment, although he brings his Action.

An Action of the Caſe lies againſt the Husband and Wife, for words ſpoken by the wife, but in caſe the wife be arreſted, and not the husband, you cannot declare.

This Action lies in theſe ſeveral Caſes following.

WHere one becomes Surety for another at his inſtance and requeſt upon Bond, and he ſaveth him not harmleſs, but the Surety is enforced to pay the money; in this caſe he may bring his Action upon the Caſe, wherein he muſt recite, how ſuch a time at ſuch a place, at the inſtance and requeſt of the Defendent, he became bound to ſuch a one in ſuch a ſum, conditioned for the payment of ſuch a ſum at a day then to come; and that the Defendent, in conſideration thereof, did aſſume to ſave him harmleſs; that notwithſtanding the promiſe aforeſaid, he hath been ſued by the Obligee, and ſhew how, and where, and what he is dammified.

It lies where a Contract is made between two by word of mouth, either for the delivery of Corn, Cattel, or any Merchandize whatſoever, and the party that promiſes ſo to deliver it makes breach.

It lies for Money borrowed, when you would make ſure the Defendent ſhould not wage his Law.

Note, that in all Actions of the Caſe upon ſpecial Promiſes, you muſt be ſure to lay a good conſideration to ground your Promiſe on, otherwiſe it is ſaid to be *Nudum pactum*, as where it is for money owing by a Stranger, and his Friend promiſes payment upon forbearance; there you muſt ſay, That whereas ſuch a one was indebted to the Plaintiff in 40*l.* and that for the more ſpeedy obtaining of the ſaid Debt, the Plaintiff intended to implead him;

and

and that in consideration the Plaintiff would forbear to sue or implead the party owing the money for such a time, the Defendent himself would pay it, in case the other did not, and alledge forbearance, &c. *Ra.Ent.4.Co.Ent.2. Ra.Ent.11.*

It lies for Money promised in consideration of Marriage, wherein the Plaintiff must aver that he married her such a time.

To call a man a Bastard, if he be the eldest Son, and in a capacity at the time of the words spoken, to inherit an Estate after his Father, and be dis-inherited, an Action lies.

To call a Maid, Whore, or to say she hath a Bastard, whereby she loseth her preferment in marriage, is likewise actionable. *In London.*

To call a married Wife, Whore, will not hold Action at Common Law; but in *London*, by custom it hath.

If a man speaks Scandalous words of any, for which Action is brought against him, if the Defendent be able to make proof of the words spoken, he may plead a special Justification; but if he plead such a plea, and makes it not good, the damages will be much aggravated thereby. *Co.Entr.26.*

If the Defendent spake other words than what are laid in the Declaration, he must plead especially and traverse the words laid in the Declaration.

Where the Defendent pleads the general Issue, which is, *Not guilty*, for words scandalous, &c. there it rests on the Plaintiffs part, to prove the words as he hath laid them.

It hath been usual, and yet is the course to arrest upon a *Clausum fregit*, and then upon filing a new Original, to declare specially in an Action of the Case. *This course was begun in Judge* Reeves *time.*

It

It lies for the hire of a Horſe, which is returned back, and the hire unpaid.

It lyes likewiſe where a man abuſeth a Horſe by immoderate riding, or otherwiſe by miſuſing of him.

The Party likewiſe that hires a Horſe if he have given earneſt for the Horſe, and that it be promiſed him, it ſhall be delivered unto him by ſuch a time, and then he refuſes to deliver him, whereby he is diſappointed.

It lyes for a Maſter againſt his Servant, for leaving off his Service, before the time contracted for be expired.

Likewiſe for a Servant, in caſe the Maſter without juſt cauſe, ſhall turn him out of ſervice before his time be expired.

It lyes for a mutual Contract made between two by word of mouth, and to bind the ſame a piece of money is given by the one to the other in earneſt; now if either will not perform what is agreed upon, the other may bring his Action of the Caſe.

The warrants muſt be expreſt.

It lyes where a man upon ſale of Sheep, warrants them to be ſound, and they prove rotten, or otherwiſe unſound.

Note it muſt be an expreſs Warranty.

An Action of the Caſe lyes where one ſells a Horſe, and warrants him to be ſound, and the Horſe proves to be unſound at the time of the ſale.

It lyes againſt a Farrier, who ſhooes a Horſe, and pricks him, whereby he grows lame, *Reg.* 106. *b. Hub.* 91.

It lyes where a Man is a Goaler, and lets a Priſoner at large, and this as well as eſcape.

Where a man hath made a diſtreſs of Cattel, *&c.* and is driving of them to the Pound, and another comes

comes and reſcues them, an Action of the Caſe lyes.

It lyes againſt any that ſhall entice his Covenant-Servant from him.

* If a man loſe Goods brought into a Common-Inn, or Hoſtry-houſe, an Action of the Caſe lyes, F. N. B, 94. *b*. **See ſome differences between* Co. l. 8. 32.

If a man deliver Goods to a Carrier, and agree upon the rate for carrying, and they are loſt and miſcarried, an Action of the Caſe lyes.

It lyes for ſtopping of a Water-courſe through his ground, whereby the Plaintiff watred his Beaſts, and did other neceſſaries; and if this be ſtopped either by Stones, Turfs, or otherwiſe diverted, an Action of the Caſe lyes.

If a man ſtop up a* Way, whether Cart-way or Foot-way, and another hath right to that way, and can preſcribe to it, an Action of the Caſe lyes. ** Not unleſs it is a common High-way.*

Where a man is to pay money, and gives a Bill of Exchange which is not accepted, but afterwards comes to be proteſted, an Action of the Caſe lyes.

Where a man ſells another mans Cattel or Goods, or Merchandizes, and warrants them to be his own, an Action of the Caſe lyes.

An Action of the Caſe lyes againſt a Taylor, who doth undertake to make Cloaths, and ſpoils them, ſo that they are not uſeful for the party they are made for.

It lyes againſt an Executor, upon the promiſe of the Teſtator, provided there be a conſideration to ground the promiſe on.

It lyes in the behalf of a Commoner againſt any that hinder him from the uſe of his Common.

Where a man hath an Office granted unto him, and another either diſturbs him in the execution of his place, or otherwiſe receives the profits due to the Office, an Action of the Caſe lyes, *Co. lib.* 9.

It

It lyes against a Cheat, for playing with false Dice, F. N. B. 95. *d.*

Where a man disturbs the keeping of a Court-Leet, an Action of the Case lyes, 33 *H.* 6. 16.

It lyes against an Under-Sheriff for an ill or false Return.

It lyes against an Under-Sheriff who makes return of Writs within any Liberty granted to another.

It lyes on the behalf of a Physician or a Chirurgeon for Physick, for performing a Cure.

Where a man builds a House so near his Neighbours, or raises any Shed, or other Out-house, or lays Piles of wood, or Stacks of Hay or Corn so near his Neighbours windows, as that they stop up his Light, an Action of the Case lyes.

And for any other Nusance, whereby a man is any ways damnified, as where a man builds a Stable or Privy-house so near his Neighbours house, that the smell thereof annoys him.

It lyes against an Under-sheriff, for taking greater Fees than is allowed by the Statute, if he be not forced to bring his Action upon the Statute of *H.* 6.

It lyes against one who shall break down a man's wall or sluce, whereby his Land comes to be drowned.

It lyes for selling corrupt wine without warranting it to be good, for that it is prohibited by Law. Note, by *Fitz. Na. Br.* 94. *c.* the Action will not lye without special warranty.

11 *H.* 6. 22.
19 *H.* 6. 49.
7 *H.* 4. 76.

It lyes where a man hath pawned Goods, and tenders the money due, and demands his Goods, and it will not be accepted, *Fitz.* 89. *c.*

It lyes for not carefully keeping Fire, whereby a man's house, who is a Neighbour comes to be burned, either in part or whole.

It lyes for digging of Lime-Pits.

It lies * against one for keeping a Dog that worries Sheep.

It lies for a Solicitor for his Disbursements and Fees.

It lies so many several ways for Promises, as that they are not to be named in particular, but are to be drawn as the case falls out; only observe some particulars following:

It lies where a man, for Mony lent, upon forbearance promises to become Security.

It lies upon a Promise to pay Mony for Land contracted for.

It lies against any one that makes an Arrest in a Liberty not being Bayliff.

† It lies for the Lord of a Mannor in ancient Demesne against a Tenant, that levies a Fine above in the Common Pleas.

It lies in the nature of an Action of Conspiracy, for one Indicted of Felony, and afterwards acquitted.

It lies against a Steward of a Court, for not taking Security in Replevin.

It lies against the Husband and Wife for Meat, Drink, &c. had by the Wife before the intermarriage.

It lies for a Keeper of a Prison, for Meat and Drink had by a Prisoner.

It lies against an Attorney or Clerk of the Kings Bench, for appearing or filing a Bail without Warrant.

It lies likewise against an Attorney, that shall do any act in any mans name, whereby the party is prejudiced in relation to the Law, without Warrant had.

It lies for erroneous prosecuting a Writ of Execution.

* *Note, it must be laid either* ad mordend. consuet. *or* scienter retinuit.

† *Note that an Action of Deceit is the most proper.*

It lies alſo againſt an Officer, who takes money by Extortion.

It lies for a reſcue made upon a *Capias*, or other Proceſs whatſoever.

It lies againſt the Sheriff, for not returning a *Venditioni exponas*.

It lies likewiſe on the behalf of an Executor againſt an Under-Sheriff, for returning falſly a *Devaſtavit*.

Note, if the Sheriff return a *Devaſtavit* upon a *Fieri Facias*, but not upon *Devaſtavit* returned upon a *Scire facias*, and enquired, &c.

If a man ſells Cloaths, and warrants them to be of ſuch a length, if they hold not out accordingly, he which buys them may bring his Action upon the Caſe.

If one take a mans Cattel, and another take them from him, an Action of the Caſe lies by way of Trover and Converſion for the Cattel.

An Action of the Caſe lies againſt Tenant at Will, who commits waſt by burning houſes, or pulling them down, but not an Action of Waſt.

Neither Action upon the Caſe, nor Action of Waſt lies againſt him for permiſſive waſt, but for voluntary waſt a general Action of Treſpaſs will lie, *Co.* 5. *Rep.* 13.

An Action of the Caſe lies againſt a Bayliff for killing or ſpoiling any of his Maſters Cattel, *Co.* 5. *Rep.* 14.

If a man deliver to another his Sheep to dung his Land, or his Oxen to plough his Land, and he killeth them, an Action of the Caſe lies.

An Action of the Caſe lies againſt a Sheriff, where the Plaintiff hath a Charter of Exception, that he ſhall not be impannelled upon any Jury, and ſhews that to the Sheriff, and yet he impannels him.

If

If the Sheriff upon a Writ of ſecond deliverance to the Plaintiff of the diſtreſs will not return the Writ, ſo that the Defendent may conſtrain the Plaintiff to come and declare, ſo that he may avow; the Defendent ſhall have his remedy by Action of the Caſe againſt the Sheriff.

Action of the Caſe lies againſt a Sheriff, where he makes a Precept to one who is no Bayliff of the Franchiſe, who returns a Jury which is quaſhed to the damage of the Plaintiff.

Where a Guardian pleads falſly for an Infant, or vouches one who is not ſufficient to render in value to the Infant, the Infant ſhall have an Action of the Caſe.

An Action of the Caſe lies againſt a Chirurgeon, who undertakes to cure a man of a wound, and neglects it, whereby a man grows worſe, and makes it through his negligence incurable.

Where a man promiſes in conſideration of an hundred pounds, or any other ſum in hand paid, to enfeoff another in ſuch and ſuch Land, by ſuch a day, and doth it not; he ſhall have an Action upon the Caſe.

There are many other Caſes wherein Action of the Caſe lies, which cannot be certainly recited in reſpect of the various occaſions of them; but in theſe before recited, and all others, the proceed is one and the ſame, only your Declarations muſt vary as your caſe requires, after your Declaration drawn, upon appearance made you deliver it to the Attorney for the Defendent, and moſt uſually with an Imparlance; which done, you enter it accordingly of that Term you deliver your Declaration upon one of the *Prothonotaries* Rolls, and then Docquet it, and keep the Number-Roll by you, whereby you may be able to continue your Imparlance, if need be.

The Term following, you give a Rule within some short time of the beginning of the Term, with the Secondary of the Office for the Defendent to plead by such a day, or otherwise the Plaintiff have Judgment. Or enter it your self upon a Common Remembrance, with a Clerk of the Office.

There is not much diversity of pleading* to this Action; the most usual Pleas are *Not guilty*, or in case of Promises *Non assumpsit.*

* *Note*, Not guilty, *is a good plea in an Action upon the Case* sur Promise.

Either of these being pleaded, you make up a Copy of the Issue, and delivered to the Defendent's Attorney, who is to pay for the Copy of the Issue, as before for the Declaration, four pence for every sheet, and also to pay for entring his Plea two shillings; that done, if you intend to try it, you must give warning to the Attorney of the Defendent when you intend to try it, and in order thereunto make out your *Venire Facias*, and get it returned by the Sheriff, and then sue out your *Habeas Corpora*, and so proceed to the making of your Record; and in all other things, both before, at the Trial, and after, as you are directed before in the Case of Debt.

But in case they plead not, but let it go by default, then upon the entring up of your Judgment you are to award a Writ of Enquiry of Damages, returnable, some return of the Term* following, which done, you make out your Writ, and procure it to be signed with the *Prothonotary*, and then seal it, and be careful to keep your Number-Roll, likewise of your Judgment when you have Docqueted it.

Or, of the same Term.

Note, that you are to give notice to the Attorney of the Defendent, of the time when you intend to execute

execute your Writ of Enquiry, else your Enquiry will be avoided.

And having so done, and brought your Writ under Seal, and delivered it to the Sheriff, you may proceed upon it according to the time agreed on.

The Sheriff is to summon an Inquest, who are to enquire what Damages the Party Plaintiff hath sustained, as also for his Costs and Expences of Suit.

The Inquest having passed, the Sheriff draws a short Schedule, and annexes it to the Writ of Enquiry, and returns the Writ of Enquiry, which is called an Inquisition, which he delivers you upon payment of his and the Juries Fees.

Having your Writ of Enquiry thus returned, and the Inquisition annexed, you must bring it to the *Prothonotary*'s Office, and there take it out in the Common Remembrance, together with the Return and Inquisition, and give a Rule upon it; which done, and the Rule out, you carry it to the *Prothonotary*, and he taxeth your Costs, and then you pay him for it, and carry it to the Clerk of the Judgments, and be sure you give him likewise your Number-Roll, and Term when the Judgment was entred, and he will make you out either a *Capias ad satisfaciendum*, or a *Fieri Facias* for your Damages and Costs. The Fees incident to this Action will follow.

Actions of Trover and Conversion.

THis Action is called also an Action of the Case, and differs not at all in the Proceedings from what hath been said before in Actions of the Case.

It properly lies where the Defendent hath found any of the Plaintiffs goods, and refuseth to deliver them upon demand; or where the Defendent comes by the Goods, by the delivery of any other than the Plaintiff, wherein he shall recover as much damages as the Goods are worth.

It is not as in an Action of Detinue, that the thing it self, whether Goods or Cattel shall be recovered, but Damages to the value of them.

Note, that a demand is absolutely necessary to the Action before it be brought, where the Plaintiff cannot prove conversion.

In this Action, if the Defendent plead that he is not guilty, which is the most general Plea in this Action, the property of the Goods must be proved to have been in the Plaintiff, before such time as they came to the Defendents hands.

This Action is now very usual, and takes place instead of Actions of Detinue, for in them the Defendent was at liberty to wage his Law, whereas this debars him.

In many Cases a special Justification may be pleaded to an Action of Trover, as where a man justified the taking of it as a Stray, and refuseth not to deliver it, being a Horse, Sheep, or the like, upon payment for there meat and keeping.

Many times in this Action, the Arrest is made upon a *Clausum fregit*, and then file a new Original, and so declare in Trover, or in case you cannot arrest, you may sue to an Outlawry.

Where a man brings his Action of Trover and Conversion against another, with whom he finds any of his Goods lost or purloined, here if the Defendent bought them in open Market or Fair, and that they be tolled in the Book, this alters the property of the Goods, and I can never recover them; but this must be specially pleaded.

Otherwise it is, where they are bought privately and not in open Market or Fair, by this there is no property altered.

It is generally held, a mans Shop is said to be open Market; but if Plate be stollen and sold to any other

ther Tradeſeman, or in any other * Shop, than the Goldſmiths to whom it is proper to buy it, it hath been held the property is not altered, but that the party loſing it, may recover the value of it in Damages by Action of Trover.

* *Not if it be ſold privately in a Goldſmiths ſhop, yet an Action of Trover will lie.*

All the proceedings in this Action are generally the ſame immediately before going in all particulars, whether it be by trial at the Aſſizes, or by Writ of Enquiry; which Writ of Enquiry, Inquiſition thereupon, (as that alſo in caſe) are to be filed by the Clerk of the Judgments, with the *Cuſtos Brevium*, after Judgment entred up.

In this Action you muſt be careful of the days when you lay the Plaintiff to be poſſeſſed, and what time after you lay it to be loſt, and what time after the Converſion.

Action of Treſpaſs and Battery.

THis Action lies where a man aſſaults another, and ſtrikes, kicks, beats, or doth him any manner of violence, either with hand, foot, or with any weapon, or throws any thing at him, or upon him, whereby he is hurt.

The Writs in Battery are by way of Original *Capias*, *Alias*, &c. If not arreſted upon the firſt Proceſs, you may take out a *Capias* by continuance, or otherwiſe to ſue to the Outlawry.

Your Original Writ runs thus: *Quare vi & armis in ipſum* L. *apud* L. *inſultum fecit & ipſum verberaverit, vulneraverit & male tractavit. Ita quod de vita ejus deſperabatur & alia enormia ei intulit ad grave damnum ipſius* (*quer.*) *& contra pacem noſtram.*

In ſome caſes you add after *vulneraverit*, *& impriſonavit*, in caſe the party were kept in Priſon; and then in the Court you name for what time.

In caſe you have the party arreſted, you muſt inform your ſelf of the time when the Battery was

done, and what the manner of the Battery was, and with what Weapons, and whether the Party were impriſoned, and what damage your Client ſuſtained.

This done, and having an appearance (which is uſually made on the *Philizers* Roll, if the Attorneys take not one anothers word in the Country, or put their hands to the Sheriffs Warrant for to appear according to the return of the Writ) you draw your Declaration, which is no more but a recital of the Writ above; only in the ſecond place, when you count upon the Writ you are to inſert the time; and when you ſay by force and arms, you then add (that is to ſay, *cum gladiis, baculis & cultellis*) and if the party were impriſoned, you then ſhew how long, whether he were forced to pay a Fine for his Redemption, your Declaration drawn muſt be delivered to the Defendent's Attorney, as before in Caſe, &c. And you muſt enter it with an Imparlance, if you give one.

And you are to give Rules, the Imparlance out, and call for anſwer, and make up your Iſſue; or for want of pleading, enter up Judgment by default, and take your Writ of Enquiry: in all things obſerving the Rules before given, either for trial or proceeding with your Writ of Enquiry.

The general Plea to this Action is *Not guilty*, but there are ſeveral other Pleas in Juſtification of a mans ſelf, as where it is done in defence of a mans perſon or goods; alſo a man may juſtifie in the defence of the perſon of his Wife, Father, Mother, or Maſter: But note, that if it be not in theſe Caſes, or in the Maintenance of Juſtice, if he be not conſtrained by a neceſſary cauſe, he is puniſhable if he beat another.

"If the Defendent plead the general Iſſue to an "Action of Battery, it lies on the Plaintiffs part to "prove the Battery. If

If a man come into anothers Houſe againſt his will, and there offer violence to his Wife, Children, Servants, or to any of his goods, he may lawfully thruſt him away, to hinder him; and if he bring an Action in ſuch caſe, he may plead ſpecially as the Caſe was, and conclude that to hinder him, or put him out of doors, he did (*Molliter manus imponere, &c.*) that is, ſoftly lay his hands upon him.

To all ſuch ſpecial Pleas it is uſual they ſhould be pleaded under Councels hands.

Where a man for preſervation of the Peace goeth about to part a Fray, by holding either of the parties from ſtriking, in caſe the party that was ſo holden do bring an Action of Battery, the Defendent may plead ſpecially, That to preſerve the perſon of one from killing, and preſervation of the publick Peace, he did come in aid to him, and did ſoftly lay his hands upon him.

To this the Plaintiff may reply, That he did it (*de injuria ſua propria abſque tali cauſa*) and then the Defendent muſt maintain his Plea, with an (*ut prius dicit,*) and of this he puts himſelf upon the Country, &c. *Vid. Co. l.* 8. *Cugat's* Caſe 67. where *injuria ſua prop. ſans tiel Cauſe,* is good, where not.

There is a Plea called (*Son aſſault demeſne*) which is where a man juſtifies in his own defence, as being firſt ſtruck, which falls out to be very frequently pleaded. Thus much for Battery.

Of Treſpaſs in general.

THeſe are the moſt general Actions next Actions of Debt, that are brought, and vary in the original Proceſs and Declaration, according as the Treſpaſs is, and the cauſe of Action thereby accrued.

It may be brought for breaking the Cloſe, without adding any manner of other Treſpaſs.

Some-

Sometime for breaking both Close and House, in which case the Original is; *Quare vi & armis clausum & domum ipsius* (*quer.*) *apud* L. *fregit, & alia enormia, &c. Et contra pacem, &c.*

You may lay it for several Trespasses at several days, or one Trespass with a *Continuando*, that is, continuing of it for some certain days or weeks, from the time laid in the Declaration.

It lies for chasing of Cattel, whereby they either died, or were bitten or worried with Dogs.

It lies for taking away of Pales, Posts, Rails, breaking of Hedges or Fences.

It lies for digging in a Leaden Mine, and taking away the Oar, or for breaking the ground, and digging there.

Where a man breaks another mans Dove-Cote, and takes away Pigeons, an Action lies.

For drawing a Cart and Horses over any man's ground, where there can be no way prescribed for, an Action of Trespass lies.

It lies for fishing in another man's Ponds, and for breaking the Pond, and letting out the water.

For chasing in a free Warren, an Action lies.

For breaking of a Close, mowing of Grass, and eating of Corn with a man's Cattel, this Action lies.

For Trespass done in a Garden, by plucking up by the Roots, *Rosemary*, *Lavender*, and other Herbs.

It lies in the behalf of a Minister, against any that hinder or oppose him, in carrying away of his Tithes.

It lies for * impounding a Horse or other Cattel, and not giving them sustenance in the Pound.

It lies for taking away Hay in cocks, and Corn in sheafs.

It lies for taking of Horses, or any other like Cattel, wherein you say (*pretii viginti librarum, &c.*) or if

* *Note, this must be understood of such Pounds as where the party cannot come to give his Cattel meat, viz. a close Pound,* Co. Lit. 47. b.

if Goods and Chattels, then you say *Ad valenc', &c.*

It lies for breaking of the Doors, Windows, Walls or other parts of a House.

An Action of Trespass lies, where one having right to a Toll in a Market, employs his Servant to gather it, and he is disturbed in it.

It lies likewise where a man hath right to keep a Fair, and is hindred.

It lies on the behalf of one that hath return of Writs, within his Hundred, and hath a disturbance by any.

And where a man hath right to keep a Court Baron, and is any ways disturbed, this Action lies.

For digging in a man's Coal-Mines; and carrying away Coals, and for digging in a man's Quarries, he shall have his Action.

WE have now given you some particular hints, in what case an Action of Trespass lies. I shall now proceed to the Processes thereupon, which (as I told you) are by Original in the first place, *Capias* in case you can arrest them, or otherwise to the Outlawry.

If you arrest the party, and have appearance, you must draw your Declaration, wherein you must be sure to take perfect notice from your Client of the the day when the Trespass was done, that so you may lay it to be done before the *Teste* of your Original, and likewise how long the Trespass continued, that so, if there be occasion, you may lay it with a *Continuando*, and whether there were not several Trespasses at several days, and the place where the Trespass was done, in what Town or Parish, for from thence your *Venue* must rise.

"In an Action of Trespass, if the Defendent "pleads the Common Bar the same Term the De- "claration is delivered, and the Plaintiff puts in his

"his new Assignment, the Defendent is to plead to "the new Assignment the same Term; and if he "pleads *Not guilty* at the Trial, the Plaintiff must "prove the Trespass.

"If you lay a *Continuando* in your Declaration "upon the Trial, you shall have the greater Dama"ges.

"If a man bring an Action of Trespass *pedibus* "*ambulando*, to plead a Licence from the Plaintiff is "good, if the Plaintiff reply and confess the Li"cence; but if he countermanded the Licence, and "since the countermand the Trespass was commit"ted, and upon the Trial he prove the Counter"mand and Trespass committed since, the Licence "is quashed and the Plea naught.

To this Action, the most general Plea is, *Not guilty*, yet is there much special pleading by way of Justification, or otherwise, but most usually that is after the common Bar unless the place hath been assigned in the Declaration, and that there be a new assignment, either in Justification for a Foot-way, or a Cart-way, or some other special Plea, &c. Or, *Not guilty*, to the New Assignment: This new Assignment is used very often to clear a Title, which upon it comes in question; here in case the Title appear to be the Plaintiffs, he shall recover Damages.

This Action brings to the party Plaintiff, if he recover Damages, but not recovery of any Possession, as in the case of an *Ejectione firmæ*.

"If a man be arrested upon a common *Clausum* "*fregit* in a Vacation, though it be returnable the "beginning of the Term following, if the Plaintiff "declare in a special Action on the Case, or in Tres"pass varying from the *Clausum fregit*, the Defen"dent may chuse to plead the same Term, but "he may imparle if he will.

"If

"If a man brings an Action of Treſpaſs *pedibus ambulando & cum Averiis*, the Defendent pleads that he tendered him amends, as 1 *s.* or 5 *s.* in ſatisfaction of the Treſpaſs, which was a ſufficient amends; the Plaintiff is to reply with a *Proteſtando*, that he did not offer Mony for amends *pro placito*, that the Mony he ſaith he offered was not ſufficient; and Iſſue taken hereupon, then all the proof lies, whether he offered this Mony, and whether this Mony was ſufficient; and always to theſe ſpecial Pleas you muſt have a Serjeants hand.

"Note, though a Treſpaſs be done in divers Cloſes, lying in one Pariſh, yet the Plaintiff when he declares ſhall ſay, *Quare clauſum fregit*, in the ſingular number; but if the Treſpaſs be in two Pariſhes, you muſt ſay, *Quare clauſa fregit*, in the plural number.

"If an Action of Treſpaſs be brought againſt a man, who pleads to Iſſue, and the Plaintiff hath a Verdict, and before Judgment the Defendent dies, now this fails for ever, and the Defendents Executors are not liable; otherwiſe it is after Judgment, *Actio perſonalis moritur cum perſona.* This is altered by an Act made.

"If an Action of Treſpaſs be brought againſt one for goods, as an Ox or Horſe, if the Defendent can juſtifie it as a ſtray, it is a good Plea, and then he muſt ſhew that he is ſeized of a Mannor in Fee, within which Mannor time out of mind Strays did belong; and ſo this Horſe coming as a ſtray within the Mannor, and he making Proclamation as the Statute is, no Body claiming, he kept it, *Prout ei bene licuit.*

"A man may lawfully come into another mans Houſe to demand or pay Mony, and if Treſpaſs be brought, the Defendent may plead ſpecially it was for Mony.

All

All manner of Proceedings after the Declarations any ways had, relating to this Action, whether by Tryal of *Nisi prius*, or Writ of Enquiry, upon default or confession, are altogether the same with what hath been delivered, as to Actions of the Case.

Actions of Covenant.

THis Action lyes where an Agreement or Compact is by Deed, Articles, or other Writings, sealed between two persons, where every of them is bound to the other to perform certain Covenants for his part, and if the one of them holdeth not his Covenant, but breaketh it, then he which findeth himself aggrieved, may have thereupon a Writ of Covenant: and Covenants are either in Law or Fact.

A Covenant in Law, is that which the Law intendeth to be done, although it be not expressed in words, as if a man demise any thing to another for a certain Term, the Law intendeth a Covenant of the part of the Lessor, that the Lessee shall hold all his Term against all lawful incumbrances.

But if afterwards in the Deed there be a special Covenant to enjoy or the like, it is adjudged in *Noke*'s Case, that the express Covenant takes away the Covenant in Law, but there have been opinions to the contrary since that Case. *Vid. Bol.* 4.

Covenant in Fact, is that which is expresly agreed between the Parties.

Also there is a Covenant meerly personal, and a Covenant that is real, as says *Fitzherbert* in his *Natura brevium, fol.* 145.

Covenant real, is where a man tyeth himself to pass a thing real, as Lands or Tenements, where a man covenants to levy a fine of Lands, *&c.*

Covenants meerly personal are, where a man covenants with another by Deed, to build a house, or to serve him.

Note

Note well, that no Writ of Covenant ſhall be maintainable without eſpecialty, but in the City of *London*, or in ſome other place priviledged by cuſtom or uſe.

Note, that a man may bring an Action of Covenant upon a Letter of Attorney.

Where a Covenant perſonal is made to any, and the Covenantor dies, the Covenant being unperformed, here his Executor ſhall maintain an Action of Covenant.

The heir ſhall likewiſe maintain an Action of Covenant, where one had covenanted by writing with his Father, to Enfeoff him in certain Lands, and doth it not.

The Proceſs incident to this Action is an Original, which is a Summons, for in this Action as in Debt, you ſay (was ſummoned and not attached.)

Your Original runs thus; *De placito quod ten. (quer.) convencion. inter eos factam ſecundum vim, formam & effectum quarundam indentur. inter eos fact.*

After your Original taken out, you may have a *Capias*, and if you arreſt him not upon the *Capias*, you may proceed to the Outlawry, as in other caſes.

Upon appearance had, you muſt declare as in the example following, wherein you muſt obſerve, that in this Action as in Debt, you have an *Alias dictus*, which muſt be made literally to agree with the Indenture.

Eſſex ſſ. I. *G. nuper de*, &c. *alias dictus* Johannes Glover, *gent. ſumm. fuit ad reſpondend. E. M. de placito quod ten. ei conventionem inter eos fact. ſecundum vim, formam & effectum quarundam Indentur. inde inter eos confectar.* &c. *Et unde idem E. per T. G. Attorn. ſuum dicit quod cum per quandam Indentur. fact. (tal. die & anno & loco,) inter ipſum E. per nomen E. de*, &c. *ex una parte & præd. J. ex altera parte cujus alteram*

teram partem ſigillo præd. J. ſignat. idem E. hic in Cur. profert. cujus dat. eiſdem die & anno teſtat. (reciting the whole Indenture) prout per eand. Indentur. plenius apparet. Et idem E. dicit quod licet ipſe perimplevit & performavit omnes & ſingulas conventiones & conceſſiones in Indentura prædict. ſuperius ſpec. ex parte ſua perimplend. & performand. in fact. idem E. dicit, quod inter prædictos ſeptem annos poſt confectionem Indentur. præd. viz. tali die & anno quidam J. D. Armig. tunc exiſten. Concil. erudit. ipſius E. apud C. prædict. in Com. præd. deviſavit & cauſam fore ſcriptum pro ulteriore aſſuranc. Clam. præd. cum pertin. faciend. & præfat. E. quoddam ſcriptum relaxationis Clam. præd. cum pertin. faciend. eidem E. per præfat. J. in quo quidem ſcripto continetur quod præd. J. remiſerit, relaxavit, & perpetuo pro ſeipſo hæred. ſuis quiet. clam. præfat. E. & hæred. ſuis tot. jus, titulum & clameum quæ ipſe habuit vel ad aliquod tempus extunc. ſequent. haberet de & in præd. clauſo cum pertin. Et idem E. poſtea eiſdem die & anno apud C. præd. requiſivit præfat. J. ſigillare & ut factum ſuum deliberare præfat. E. præd. ſcript. relaxationis in forma præd. diviſat. Et præd. J. ad hoc faciend. tunc & ibidem omnino recuſavit contra formam Indentur. præd. prædictus tamen J. licet ſæpius requiſit. conventionem præd. non tenuit pro eo quod ipſe præd. J. & hæred. ſui, & omnes perſonæ & hæred. ſui clameum in vel per præd. J. ad aliquod tempus durant. ſpatium præd. ſeptem annorum pro rationabili demand. inde eiſdem vel aliquibus eorum faciend. fecerit, permitteret & cognoverit vel cauſaret faciend. permiſ. & cognoſcend. omnia & ſingula act. & acta rem vel res pro melior. & ulterior. aſſuranc. & certe fac. permiſſorum cum pertin. præfat. E. & aſſign. ſuis prout per Concil. erudit. ipſius E. & hæred. & aſſign. ſuorum rationabiliter eſſet deviſat. ſed ille fregit & conventionem tener. eidem præfat. E. hucuſque contradixit & adhuc contradic. unde dic. quod deteriorat.

eſt

est & damnum habet ad Valenc. Ducentarum Librarum & inde produc. sectam, &c.

Et præd. J. *per* F.N. *Attornat. suum ven. & defend. vim & injur. quando, &c. Et dic. quod præd.* E. *non requisivit præd.* J. *sigillare, & ut factum suum deliberare præfat.* E. *præd. scriptum relaxationis & ulterior. assuranc. præd. clamei cum pertinen. præfat.* E. *faciend. prout præd.* E. *per narrationem suam præd. superius suppon. Et de hoc pon. se super patriam. Et præd.* E. *similit. Ideo prec. est Vic. quod venire faciat hic in Crastino* S. Trinitatis *duodecim, &c. per quos, &c. Et qui nec, &c. ad recogn. &c. Quia tam, &c.*

Observe by this Issue you see joyned, that where the Defendent takes Issue, you say (*ponit se super Patriam,*) and where the Plaintiff takes the Issue, you say, (*& hoc petit quod inquiratur per patriam.*)

In this Action you recover damages assessed by the Jury for what you are damnified, by the breach of the Covenant and Costs of Suit.

Note, that an Administrator may have an Action of Covenant as well as an Executor, and the writ of Covenant ought to be brought in the County where the Deed was made; but if it be brought in another County than where the Deed was made, the party Defendent shall not have a Plea in Bar to the Writ, unless that the Deed bear date in another County.

A Writ of Covenant also lies against Pledges, who become Sureties that another man shall perform a Covenant.

The Assignee of the Lessee shall maintain an Action of Covenant against the Lessor, although he be not specified in the said deed of Covenant to be an Assignee.

See in *Spencers* Case 5 *Rep.* where an Assignee shall be bound that is not named, and where not.

HAving given you before an Iſſue joyned in an Action of Covenant, you are (in caſe you proceed to Trial) to make out your *Venire facias*, as in others, with this difference only that you ſay (*de placito Conventionis fract.*) and then your *Habeas Corpora*, and the reſt of your proceedings in order to Trial, as before in other Actions.

But if after your imparlance and rule being out, the Defendent plead not, you muſt take your Judgment by default, which is to be ſigned by the *Prothonotary*, and then you are to have your Writ of Enquiry, awarded upon your Judgment-Roll, and ſigned by the *Prothonotary*.

There may be one or more Breaches aſſigned, as the caſe may require.

But in an Action of Debt upon Bond for performance of Covenants, he can aſſign but one Breach.

The reaſon is, becauſe every Breach is a forfeiture of the Bond.

Now becauſe within the Title of that Covenant real, fall Writs of Covenant, it wil' not be amiſs to intert here the Form of ſuing out a Fine.

And firſt, How to acknowledge a Fine at the Bar in Court.

IN the firſt place you are to take notice, that it is in the parties election, whether they will acknowledge a Fine in open Court, or before the Lord Chief Juſtice of the Common Pleas at his Chamber, or elſewhere out of the Court, as before ſome Judge of the ſame Court, or before the Juſtices of Aſſize in the Country, when they go a Circuit, or before Commiſſioners in the Country, by virtue of a * ſpecial *Dedimus poteſtatem*, to give them authority to take the knowledge thereof, none of all thoſe ſaving † the Lord Chief Juſtice having power to take without *Dedimus*, &c.

* *The* Dedimus *is by the Statute of* Carliſle.

† *This by the Lord Chief Juſtice is held by ſome.*

If

If the acknowledgment is to be made in open Court, you muſt have your Writ of Covenant made by the Curſitor, and then compound it at the Office of Alienation, where it muſt be likewiſe endorſed and entred, and ſo fitted for the Seal, to which muſt be annexed your *Præcipe*, and concord in Parchment, which you muſt deliver to ſome one of the † Serjeants at bar to draw it for you; and then you pay him three ſhillings four pence, and the other Fees payable in Court are certain and are not great; for by the acknowledgment in Court, the Client ſaves divers Fees and Charges, which otherwiſe the caption would coſt.

"If any of the Cognizors in a Fine be a Feme co-"vert, ſhe muſt go to the Puiſne Judge to the "Bench to be examined of her Conſent; which "Judge taketh the Concord ſo written in Parch-"ment, and examineth her apart privately, and then "delivereth it to the *Prothonotary* to be recorded.

The Caption being paſt, you proceed with your *Præcipe* and Concord, and Writ of Covenant, through the Alienation Office, Kings Silver, *Cuſtos Brevium*, and Chirographer, as hereafter is ſhewed in other acknowledgments, and warrant of Attorney.

How to acknowledge a Fine before the Lord Chief Juſtice.

IF you acknowledge your Fine before the Lord Chief Juſtice of the Common Pleas out of Court, firſt draw your *Præcipe* and Concord in a ſheet of Paper, and then bring the parties that muſt acknowledge the Fine to my Lords Chamber, and deliver your *Præcipe* to my Lords Clerk of the Fines, who will read it to them in preſence of my Lord; and their hands being firſt ſet to it, they acknowledge it before my Lord, and he putteth his hand to it.

* *Note, if the Lord Chief Juſtice be in Court, you muſt have your writ of Covenant under ſeal, if he be not there, you may paſs the Fine at Bar without it.*

† *Ser. The Sergeant actually hath but 2 s.*

The Fee of my Lord Chief Juſtice is, 11 s. 8 d. which being paid to my Lords Clerk, after the acknowledgment, the Clerk will afterwards engroſs the *Præcipe* and Concord in Parchment, and get my Lords hand to that which you muſt fetch from him. That done, you muſt carry it to the Curſitor of the Shire where the Land lies, and leave it with him to make a Writ of Covenant by: when the Writ is made, before you paſs it under Seal, you carry it to the Alienation Office, where you are to pay a Fine for licence for leave to alien, and there it is you muſt make your compoſition, which is ſet by the Commiſſioners ſitting for that purpoſe; and that you may do it with the leſs charge to your Client, you muſt inform your ſelf of the value of the Land by the year, and in caſe there have been a former Fine, if you have it not, to know the Term when it was, and in caſe you inform the value, there is one ſits purpoſely with the Commiſſioners to take it, who was formerly a Doctor, you muſt by entreaty, perſwaſion or otherwiſe draw the Fine to be ſet at as low a rate as poſſibly you may.

The value being ſet down by one of the Commiſſioners if it exceed forty ſhillings, (for elſe there is nothing to be paid) you muſt go to the Receiver in the ſame Office, and pay the Fine ſo aſſeſſed, which is the Kings Silver, for the Kings Licence; which Licence the Clerk of the Kings Silver entreth, as is hereafter ſhewed; when the Mony is paid, the Receiver will ſet his hand to the back of the Writ, then give it to the Doctor to ſign, who hath four pence for his hand, then get the hands of two of the Commiſſioners to the back of the Writ; which done, you muſt carry it to the Clerks there ſitting, to be endorſed and entred.

This being done, you bring back your Writ to the Cur-

Curſitor, and he will get it ſealed, and then you pay him the Fee of two ſhillings ſix pence; then having broke it open, you are to return it as follows:

The Return,

Johannes Doo.
Pleg. de proſ.
Richardus Roo.

Johannes Fenn.
Summon.
Richardus Fenn.
A. B. *Ar Vic.*

This is now by a late erected Office done by an * Officer, who takes for the doing of it, and making an entry of it, 1 *s.* 6 *d.*

* *This Office is erected by the Stat. of* 23 Eliz.

Note, you are to file a Warrant of Attorney with the Clerk of the Warrants where your writ of Covenant muſt be ſigned; which Warrant is as follows, (the Shire in the Margin.)

Eſſex ſſ.

W. G. *Pon. loco ſuo* J. H. *ad proſ. breve ſuum de Con' verſus* T. L. *de terris & tenementis in* A. & B.

That done, file your writ of Covenant and your Concord which you had from the Lords Clerk together, and carry them to the *Cuſtos Brevium* his Office in the Temple, to the Clerk who dealeth for that Shire, and leave them with him to enter in his Book, and to endorſe the Writ. When he hath done fetch them from him, and pay him for the ſame 3 *s.* 8 *d.*

Then take them and carry them to the Kings Silver Office, to enter the Kings Silver, which is the Fine for the value which you paid to the Receiver in the Alienation Office.

The form of his Entry you may ſee in the Rolls of the Kings Silver Office, amongſt the Plea-Rolls of any Term in the Treaſury at *Weſtminſter*, his Fee is for entring of it 10 *d.* or other Fees, &c.

which when he hath done, you must fetch it away, and deliver it to the Secondary in the Chirographers Office, who enters it into his Book, and hath for his Fee 5 *s.* 8 *d.* if it be in Term; but if it be not in the Term, then you must give him six pence more, which he will have for allowing the Proclamation in the same Term: That done, you must in the same Office deliver it to the Clerk of the Office, who is appointed to write for that Shire wherein the Land lies to engross, he hath for engrossing of it 3 *s.* 6 *d.* or more, in case it be exemplified.

When your Fines are engrolled, which are by Indentures, deliver them to your Client to keep.

In making your Clients Bill, you always take for your own Fee, six shillings eight pence.

How to acknowledge a Fine before a Judge out of Court, by Dedimus Potestatem.

YOu shall proceed in taking the acknowledgment, and in passing the Writ of Covenant thorow the Alienation Office, in like manner as is before shewed; which being done, and delivering your Writ back to the Cursitor, you must bespeak a *Dedimus Potestatem*, which the Cursitor must make; and when you have your Writ of Covenant and *Dedimus Potestatem* under Seal, you must deliver the *Dedimus* to the Judges Clerk of the Fines, and he will endorse upon the *Concord*, as before is shewed, and return the *Dedimus*, and get the Judges hand to it: which *Dedimus* so returned, Concord and Writ of Covenant you must annex together, and pass through the *Custos Brevium*, Clerk of the Warranty, Clerk of the Kings Silver, the Office of Inrolments as 'tis termed, and the Chirographers Office in like manner as is before shewed; The course of Proceedings and Fees being all one, more than this, that you pay to

the Curſitor for your *Dedimus Poteſtatem*, 9 *s.* 2 *d.*

" Any Judge of the Common Pleas, Kings Bench,
" or Baron of the Exchequer, may take the Caption
" of a Fine before the *Dedimus Poteſtatem* is ſued
" forth; which you may ſue forth afterwards, and
" carry it under Seal to him that took the Cogni-
" zance of the Fine, who will return the ſame.

How to ſue forth a Fine to be acknowledged before Commiſſioners in the Country, by ſpecial Dedimus Poteſtatem.

WHere in regard of the Cognizors debility of Body, or remoteneſs from *London* or *Weſtminſter*, or other occaſion, you are to ſue out a Fine, and paſs it by ſpecial *Dedimus*, enabling Commiſſioners in the Country to take the acknowledgment, you are to proceed as follows:

Firſt, draw your *Præcipe* in Paper, as a note for the Curſitor to draw the *Dedimus* by, and go therewith to the Curſitor of the Shire where the Land lies, and upon your *Præcipe* in paper inſert your Commiſſioners names, which muſt be four in number, whereof one at leaſt muſt be a Knight, and get him to make your *Dedimus Poteſtatem*, for which you muſt pay him 24 *s.* 2 *d.* and in paying of him (for he takes for them all) you pay a Fine, and for a Judges hand, and for the Maſter of the Rolls his hand, which hands muſt be had before it be ſealed, and then having it under ſeal, deliver it ſo, and the *Præcipe* and Concord ingroſſed in Parchment before any two of the Commiſſioners named in the *Dedimus*; and your Cognizors being preſent, let them take the *Caption*, as is before ſhewed: Which being done, they muſt return the Writ of *Dedimus*, and their Execution thereof in manner and form following on the back of the Writ.

Executio istius brevis patet in quadam scedula huic brevi annex'.

And they must write the day of the *Caption* of the Cognizance underneath the Concord as follows:

Capt. & Cogn. apud C. *in com.* D. 10 *die* A. *Anno Regni Regis* Caroli *secund.* Angliæ, &c, *Coram nobis,*

A. B. C. D.

Underneath the which, the Commissioners are to subscribe their Names.

"Note that in this case, if one of the Commissi-
"oners that makes the *Caption* be not a Knight, you
"must draw up a Certificate upon the back of the
"Concord, and carry it to a Judge of the Common
"Pleas for his *Allocatur*.

"The Form of the Certificate is thus:

A. B. gent. *one of the Commissioners in the Writ of* Dedimus *named, maketh Oath that this Fine was duly executed, the Cognizors of full Age, and the Feme Covert (being secretly and apart examined) willingly consented.* A. B.

"But herein great care must be had by the Com-
"missioners, in executing their Commission, lest
"they commit some notorious Error to make void
"the Fine; as if the *Dedimus Potestatem* be to two
"joyntly to do it, and one of them doth it alone;
"or if the same be to three joyntly to do it, and
"two of the three only do it, or the like, this will be
"Error.

"So if one of the Cognizees be one of the Com-
"missioners, and he himself takes the Cognizance
"of the Fine, this likewise will be Error, *F. N. B.*
"146, 147. *Dyer* 220. 11 *H.* 6. 21. *Crook.* 1. 249.
"*Form. Bene placitandi Tit. Errors Assignes.*

"The Judges and Commissioners impowered to
"take cognizance of Fines, are to be careful of
"whom they take such cognizances for Fines before
"them

"them: That they know the Cognizors, and ſo do "not ſuffer one Perſon to make cognizance in the "name of another, nor take any cognizance from "Perſons prohibited by Law, and ſuch as are unfit "to be Cognizors, as Infants, Mad men, Drunken "men, and the like; And if Husband and Wife be "Cognizors, the wife ought to be examined ſolely "and ſecretly, whether ſhe be content of her own "free will to part with her right in the Land, or "whether ſhe do it by menace and threats, or out "of fear of her husband, and then the contents of "the Fine muſt be read diſtinctly to her; and if "the Judge doubt of her Age, he may examine her "upon Oath, and ſo may Commiſſioners: Which "being done, and the Fine read to the Cognizors, "they are to put their hands to the Concord, and "then the Commiſſioners are to certifie the cogni-"zance of the Parties the ſame day and year when "it was taken, and ſo return the *Dedimus* and Con-"cord into the Court of Common Pleas, within a "year after it is taken at fartheſt: And upon any "of the Commiſſioners refuſal ſo to do, the Party "grieved may by *Certiorari* compel him that hath "it in his cuſtody, his Executor or Adminiſtrator "to certifie it.

Having your *Dedimus Poteſtatem* thus returned, you muſt file your *Dedimus* and *Concord* together, and carry them to the Curſitor for the making of your Writ of Covenant, which having had and compounded, your Proceed is as in all other Fines through the ſeveral Offices.

Note, that upon every Fine paſt, where a Fine is paid, there is within four or five Terms a Poſt-Fine, that comes in charge to the Sheriff to levy in the County where the Land lieth, and that Fine is as much, and half as much as was paid before in the Alienation Office.

See

See for this the Exposition of the Statutes of Fines in 2 *Inst.* 510, 520.

The Charge of acknowledging a Fine before the Lord Chief Justice.

	s. d.
For drawing the Concord,	3-4
For my Lord Chief Justices Fee for acknowledgment,	10-4
To his Clerk for ingrossing the Concord,	1-4
For the Writ of Covenant,	2-6
For the Return,	2-0
For the Fine,	
To the Receiver for marking the Writ of Covenant,	0-8
For the Entry and Indorsement,	1-6
For the Doctors hand,	4-4
For the Warrant of Attorney, and filing it,	0-8
To the *Custos Brevium*,	3-8
To the Clerk of the Kings Silver,	1-4
To the Chirographer,	6-2
For ingrossing the Fine,	3-6
For the Attorneys Fee,	6-8

Charges of the Fine acknowledged at the Bar.

For drawing the *Præcipe* and Concord,	3-4
For the Writ of Covenant,	2-6
For the Return of the same,	2-0
For the Serjeant at Law,	3-4
To the Secondary,	1-2
To the Crier, Tipstaves, and Court-keeper,	1-6
To the Porter,	0-4
For the Fine,	
To the Receiver,	0-6
For Entry and Indorsement,	1-6
For the Doctors hand,	6-4
For the Warrant of the Attorney, and filing of it,	0-4
To the *Custos Brevium*,	3-8

To

	s. d.
To the Clerk of the Kings Silver,	1-4
To the Chirographer,	6-2
For ingrossing the Indenture of the Fine,	3-6
For the Fee,	6-8

Charges of a Fine acknowledg'd by Dedimus Potestatem, *before a Judge, and Exemplified.*

For drawing the *Præcipe* and Concord,	3-4
To the Judge for his Fee,	9-8
To the Clerk for the return of the *Dedimus*, and ingrossing the Concord,	2-6
For the Writ of *Dedimus Potestatem*,	9-2
For all other Fees, as in the next proceeding, for the several Offices.	
For the Exemplification,	2-8
For the Exemplifying,	5-6
For the Seal thereof,	2-2

Charges of a Fine by special Dedimus Potestatem *taken before Commissioners.*

For drawing the *Præcipe* and Concord,	0-3-4
For the special *Dedimus Potestatem*,	1-4-2
For the Return,	0-3-0

For the rest of the Fees, they differ very little from what are upon Fines otherwise acknowledged.

HAving spoken so largely of Fines, it now rests we should speak somewhat of Recoveries, for in many cases where a Fine is to be had, if there be Remainders over, it is very necessary for the Purchasers security to have a Recovery, to bar those in Remainder.

We shall therefore shew you how to sue forth a Recovery, the Tenant and Voucher coming in person to the Bar.

When you would sue forth a Recovery to be suffered by the Parties in open Court, you must do thus:

Draw

Draw your *Præcipe* for your Writ of Entry, naming the Demandants and the Tenants, the quantity of Lands, and of what nature, how many Acres, what Mannors, Meſſuages, and in what place or places they lie or extend.

Then enter the *Præcipe* upon the firſt Remembrance of the Prothonotary, in whoſe Office you enter, and put the Voucher or Vouchers names in the Margin of the Remembrance, if it be a ſingle Voucher, then thus; *Tenens propr. Voc. ad War.* Geo. Humſton.

If a double Voucher, *Tenens propr. voc. ad warr.* J. L. *qui voc. ad warr.* Geo. Humſton, (who is the common Voucher, and the laſt Voucher in all Recoveries) if a Treble Voucher, then you muſt name another perſon to be vouched over.

Upon this Remembrance you muſt enter after your *Præcipe* the Return and *Teſte* of the writ of Entry, as it is returned, and the Sheriffs name; This you make perfect before you examine your Recovery with the Prothonotary.

Thoſe Remembrances are always brought to the Hall in the Term-time at the firſt ſitting of the Court; ſo that when you would draw your Recovery at Bar, your fitteſt time will be in a morning when the Judges firſt ſit down, before they enter upon buſineſs.

Having your Clients in readineſs at the Bar, the Tenants and Vouchers, and the Remembrance in your hand, call them up between the Serjeants, and then deliver the Remembrance into one of the Serjeants hands, who will ask which is the Tenant, and cauſe him to ſtand up as alſo the Vouchers, to the intent that they may be ſhewed to the Court, then the Judge will ask, *Who knows the Parties?* Which you or ſome other muſt anſwer, *You know them to be ſuch Parties*,

ties; or else might others come either in men or womens names, and suffer a Recovery of their Lands, to the loss of their Lands, as hath been heretofore seen; where the husband brought in another woman a stranger; saying, *She was his wife*, and suffered a Recovery of his wifes Lands to cut off her Estate without her consent.

After the Tenant or Tenants with the Vouchers have their appearance recorded, then must you give for every Serjeant that speaks, (and one there is for each person personated, whether Demandants, Tenant, or Voucher, or Vouchers) two shillings; which done, and the rest of the Fees paid in Court; which follow after amongst others.

Then get the Cursitor to make your writ of Entry by the *Præcipe*, and having your writ of Entry unsealed, you must proceed therewith in the Alienation Office, and other Offices, in all things as was shewed in a writ of Covenant, for the Fees are all one, only you must have the Attorney Generals hand to your writ of Entry, which you have not to the writ of Covenant; for which you pay 10*s*.

Then take your Writ and get it sealed, and then open it & return it, as you do your writ of Covenant.

Then deliver your Writ to the Clerk of the *Prothonotaries* Office, who entreth for you, and he will enter and exemplifie the Recovery, and make your writ of Seisin, and return that, and examine the Recovery with the Remembrance, writs of Entry and Seisin, and the Roll your Recovery is entred on with the Prothonotary, who must sign your Exemplification, which being carefully examined and signed, you must get sealed, and then deliver it to your Client: And you must be very careful to see both your writ of Entry and Seisin filed with the *Custos Brevium*, for that is the warranty for your proceedings had.

Note,

Note, your Writ of Seisin may be made returnable *Indilate*, or at a day certain, or of the Term following, all which your own further experience and practice will shew.

"Note, you must Teste your Exemplification af-
"ter the Return of the Writ of Seisin; but if there
"be not fifteen days between the Return of the
"Writ of Entry or the Writ of Summons, and the
"end of the Term, then must the Writ of Seisin
"be returnable *indilate*; and the Exemplification
"must bear Teste the last day of the Term, in
"which the Writ of Entry or Summons came in.

"In a Recovery with double Voucher, you must
"either by a Fine *sur Cognizance de Droit come ceo*,
"*&c.* or by a Deed of Feoffment, or Bargain and
"Sale inrolled, or Lease and Release make him
"(your intend to be) Tenant at the time of the
"Writ of Entry brought for every writ of Entry
"must always be brought against him that must be
"a perfect Tenant of the Freehold of the Land
"demanded at the Return of the Writ.

Note, you may pass your Recovery at the Bar be-
"fore you sue out your writ of Entry for the better
"dispatch of your Client, and so is the common use.

"The Demandant in any Recovery need not ap-
"pear at the Bar.

How to sue forth a Recovery by Dedimus Potestatem, *and Warrant of Attorney.*

IF either the Tenant or Vouchees cannot come into the Court in person, you must pass it by Warrant of Attorney; which Warrant of Attorney may be taken by any of the Judges of either Bench, Barons of the Exchequer, or Serjeants at Law in their Circuits without *Dedimus Potestatem*, or by Commissioners in the Country, where you must proceed as in the Fine by *Dedimus Potestatem*.

When

When you acknowledge your Warrant before a Judge, you must draw up your Warrant as before in Parchment, and go with the parties before a Judge, and acknowledge them, and he will underwrite the Day of the Caption, and subscribe his Name, then get your writ of Entry made and passed through the Alienation Office, which done, seal it, and deliver it to your *Prothonotaries* Clerk, and he will enter it and will award the writ of Summons, which will come in * five Returns after the *Teste* of the writ of Entry inclusive, and he will make a Copy of the Declaration he entreth in parchment, which together with the writ of Summons, and the warrant of Attorney, he will examine with the *Prothonotary* by the writ of Entry and the Roll.

* *By the Stat. 16, 17 Car. cap. 6. there is but five Returns.*

Then will he return a writ of Entry, and give it you fixt together with the writ of Summons, warrant of Attorney, and copy of the Declaration.

The writ of Entry you must file, the writ of Summons you must seal, and keep them so fixt together safely till the writ of Summons be returnable: at which time you must bring the same into Court, and deliver it to one of the Serjeants, who will draw it at the Bar, as the manner is, and you must pay the Fees in Court; which done, you must take it from the Serjeant and give it to the *Prothonotary*, who will mark it thus, (*Ad Barram*) and give it you again, which you must deliver to your Clerk in the *Prothonotaries* Office, who will exemplifie and make your Recovery perfect and fitted for the Seal.

NOte, That although the Tenant appear by warrant of Attorney, if either the Recovery be a single Voucher, or the Vouchees come in person, it needeth no Summons, and so may be a perfect Recovery of one Term.

Note

Note also, Where you will take your Warrant by *Dedimus Potestatem* before special * Commissioners you must carry a Note of your *Præcipe*, and of your Commissioners Names to the Cursitor, and get him to make your *Dedimus*, and proceed in that as it is shewed you in case of a Fine, as to the Caption: and when your Warrants are acknowledged, get them certified, and then by the help of your *Prothonotaries* Clerk, you may soon proceed to perfect your Recovery, either to Summons or *Alias* Summons, or so as your cause shall require.

*There must be a transcript of the Warrant of Attorney, and a Mittimus unto the Common Pleas, where 'tis taken by course in this Country.

It behoveth the Attorney to be very careful of the true returning and filing of his Writs, and the examining and filing of his Warrants, and other proceedings, for fear of committing Error: and to that purpose, by the Stat. of 23 *Eliz.* it hath been used, especially in weighty matters, to exemplifie the Writs, Returns, and Warrant of Attorney, for fear of being imbezled, whereby the Recoveries might be overthrown.

If you are to search for any Recovery of an old Term, you may search in the Office of the Clerk of the Warrants of Attorney, where you shall soonest find it of any place, by reason all the *Prothonotaries* bring in their Plea-Rolls, on which the Recoveries are entred to the Clerk of the Warrants to take them out into a Book.

Charges of a Recovery with two Vouchers in person at the Bar.

	s. d.
For drawing your *Præcipe*,	2-6
For taking it into the Remembrance,	1-0
For your writ of Entry,	2 6
To the Receiver,,	6-0
For the Doctors hand, entring and endorsing,	1-6
For drawing it at Bar, and four Serjeants,	13-4
To the Cryers,	6-0

To

	s.	d.
To the Box,	0	6
To the Warden of the Fleet,	0	6
For the common Vouchee,	0	4
For the Attorney General's hand to the writ,	10	6
For marking the Remembrance when the Recovery is drawn at the Bar, and to the Judge and Clerk of the Warrants,	3	0
For the Return of the Writ of Entry,	2	0
For the *Poſt-diem* of the Writ of Entry,	0	4
For the Return of the Writ of Seiſin,	2	0
For the Prothonotary for the Entry of the Recovery,	14	6
To the Clerk for exemplifying of it, and making the Writ of Seiſin,	7	6
For Sealing the Exemplification and Writ of Seiſin,	2	9
For filing the Writs of Entry and Seiſin,	2	0
For the Fee of Demandant, Tenant and Vouchee in the Recovery,	10	0

"Note, although the Tenant appeared in perſon "at the acknowledgment at Bar, yet if they appeared "not alſo at the Return of the Summons in perſon, "there muſt be a Warrant of Attorney for the Te- "nant, and the ſame muſt be entred upon the firſt "Summons-Roll, and upon the Remembrance under "the *Præcipe* for the Writ of Entry of the ſame Re- "covery; and make the Warrant of Attorney for "the Tenant thus:

T. R. *Armig.* & J. C. *generoſus po. locis ſuis* J. B. & *Suſſex ſ.* E. D. *Attorn. ſuos conjunctim & diviſim verſus* T. W. & R. M. *Ar. de placito terræ.*

Benſon.

"At the Return of this Summons, if the ſecond "Vouchee appear by warrant of Attorney, you "muſt make another writ of Summons, for the latter

"Vouchee returnable the fifth Return, after the Re-"turn of the first Summons, and Teste of the Re-"turn of the first Summons, for one Writ will not serve for both.

Charges of a Recovery by Summons upon a Warrant of Attorney.

	s.	d.
For drawing your *Præcips*, and the Warrant of Attorney,	3	4
For entry of the Summons to the Prothonotary,	4	6
For making the Writ of Summons and the Seal,	2	7
To the Clerk for drawing the Summons, and the Entry in Parchment,	2	6
For filing every warrant of Attorney,	0	8
For Return of the writ of Summons,	2	0
For the filing of it,	1	0

Note, that every single Voucher hath three Serjeants, a double Voucher four Serjeants, and a treble Voucher five Serjeants, and so further.

	s.	d.
The Prothonotary hath, as you see before, for his entry for every Summons,	4	6
For every single Voucher,	10	6
For every double Voucher,	14	6
For a treble Voucher,	18	6
For every *Dedimus* and *Mittimus*,	6	0

The Charge of a Recovery under the Great Seal of England.

	l.	s.	d.
For the *Certiorari*,	0	13	4
For the Allowance thereof,	1	09	6
For the Exemplification of every Skin,	1	06	8

For

For the Seal, 1-60-6

Come we now to the Action called Ejectione Firmæ.

MAny of these Actions have miscarried, by reason that the proceedings before process, relating to the Lessor's Entry, the making of the Lease, the Entry of the Lessee, by vertue of the Lease, the the Ejector's Entry upon him, and his Outer and Ejectment, where care is not taken, and they be not circumspect to prevent a defect in any of these, it causeth much danger and prejudice of the Client, and causeth no little disgrace to the Attorney. In this Action also as very useful, we shall speak to these things in order.

1. The Entry of the Lessor that hath the right.
2. The Lease made by him for tryal of the Title.
3. The Entry of the Lessee, by vertue of a Lease so made.
4. The Entry upon him, and his Ouster and Ejectment.

First, is to be considered, what right and title the Lessor hath to enter, whether he hath any right or title to the Lands or no: For if the right and title appear on the Defendent's part, the Plaintiff's Action will fail.

Now a man may have a Right or Title to that Land whereof he hath no possession or property, as where Land is taken from a man wrongfully by Disseisin, in this case the challenge and claim of him from whom it is taken, is called a right. There is a Right of Action, which is, where there is no remedy left, but an Action to recover the Land; and there is a Right of Entry, when the Party claiming, may for his relief, either enter into the Land, or have an Action to recover it.

There is a Title of Entry, which is, where no wrong is done, and yet one who hath a lawful course

to enter upon the Land which another hath, hath no Action to recover it; as where Entry is given to a man for a Condition broken upon an Eſcheat, the Tenant dying without Heir.

In all which Caſes, he muſt make his Entry before he can bring his Action.

The property and title of Land is made, and may be gained ſeveral ways.

1. Either by Entry, as in caſe of occupancy, where Land is granted to *J. S.* for another man's life, and *J. S.* dyes, in this caſe, he that firſt gets into poſſeſſion ſhall have the Eſtate.

2. By Deſcent, where one hath Land of Inheritance, and dyeth, not diſpoſing of it.

3. By Eſcheat, where the Owner dyeth ſeiſed without any Heir, which may be, in caſe he have only a Baſtard; or becauſe he is attainted of Treaſon, or Felony.

4. By Conveyance, and ſo the property of Land is transferred, and ſo it is paſſed ten manner of ways, as follow:

Fine, Recovery, Feoffment, Grant, Leaſe, Bargain and Sale, Exchange, Surrender, Releaſe, Confirmation.

A man may have property in Land alſo by an Execution, as by *Elegit* or *Extent*.

If he ever had a Right of Entry into the Land, it muſt be conſidered, whether it doth continue and be not taken away; for one may have a Right of Action, and no Right of Entry to recover his Land, and he that will maintain his Action muſt make himſelf a Title under the Leſſor, that hath a Right of Entry into the Land when he made the Leaſe; for he that makes the Leaſe, muſt have power and right of Entry, at the time of the Leaſe made, otherwiſe neither the Entry nor the Leaſe will be good.

Now

Now that the Entry may be good and warrantable by the Lessor, for otherwise the Action is not maintainable; take these Rules following.

1. This Entry is to be made by the Party that hath right.

2. It is a purposed going into, or setting his foot upon the Land, as upon his own Land.

3. This may be done by the Party himself that hath right to enter, or by his Attorney, by a Warrant from him, or by any other to his use, and if it be done by Attorney, he must have a good Authority, and see he do duly pursue it.

Note, that one Joynt-Tenant, Tenant in Common, or Copartner, having right to enter, may, if he will, enter for all the rest.

If such a person enter generally, or for, or in the name of the rest; and the rest do not afterwards disagree to it, this is a good Entry for himself and the rest; and therefore if one have Issue, a Son and Daughter by one Venter, and a Son by another, and being seized of Copy-hold Land, devise all to the younger Son, and dye, and he enter into all; this Entry shall avail the eldest Son, to put him in possession of the third part.

The Entry into one part, may be sufficient to gain the possession of the rest of the land.

The Entry into parts, must be in the name of all, &c.

If one restrain his own Entry, and make it special, and say, that it shall be to such an Acre only where he puts his Foot; in this case it reduceth the possession of no more but that part, &c.

If a Lease be made to *A.* and delivered to *B.* to the use of *A.* and *B.* enter to the use of *A.* and after is outed, *A.* may have his Action upon the Entry.

Having done with Entry, we come now to ſpeak of Leaſes, for it is abſolutely requiſite for the maintaining of this Action that a good and warrantable Leaſe be ſhewed forth.

For the better enabling of you to make ſuch leaſe, take theſe Rules following.

1. The Leaſe to try the Title muſt be well made, ſealed, and delivered as other Leaſes, and Deeds are done; and for that ſee the Book of Common Aſſurance, *Chap.* 4. 14. A Book very uſeful for many Conveyances, both in this and other kinds.

2. The Leaſe and Entry may be made by the party Leſſor himſelf, if he be of full age and not a Feme-Covert, or by his Attorney, by a letter of Attorney, wherein the Leſſor may ſeal and ſign the Leaſe, and ſeal and deliver the Letter of Attorney at one and the ſame time, to ſome Friend of his; and in this letter of Attorney, he muſt recite the Leaſe, and give the Attorney power to enter into the Land, and there to deliver the Leaſe of the Leſſee as his Deed, and then the Attorney muſt do it in ſuch ſort, as the Leſſor himſelf ought to do it; and he muſt not deliver it till he come to the Land.

3. The Leaſe muſt be delivered upon the Land; for if the Leſſor ſeal, and deliver the Leaſe before he hath made his Entry upon the Land, it is void.

The Husband and Wife may make a Leaſe and a Letter of Attorney, to enter and deliver it upon the Land, and this is good.

A Woman Covert, or an Infant, cannot make a Letter of Attorney, to ſeal a Leaſe, to try a Title, as a man of full age may do.

The Husband alone may make a Leaſe of his Wifes Lands.

A Copy-holder may make a Leaſe to try the Title for a year without licence.

A

A Tenant in Common may make a Leaſe to try the Title for his part; *&c.* for a year, *&c.*

The uſual Tract that is uſed in ſealing this Leaſe of Ejectment, is as follows:

Where a man hath a Title to an houſe, land, or both, and deſires to gain the poſſeſſion, it is uſual to make a Leaſe to ſome Friend (who he is aſſured will not deceive his truſt, but will ſurrender up the Leaſe, *&c.*) for two or three years, or more, for ſo long as he may be ſure the time is not expired, before he gets his Tryal and Judgment.

This Leaſe being made, he goes with ſuch his Friend the Leſſee, to the Mannor, or Chief Houſe, or ſtands within the door, or to the land where no houſe is, where he ſeals and delivers it to his Friend, and taking the Ring, or any part of the Door in his hand, delivers the Leaſe, mentioning the houſe and lands, with the appurtenances, which are contained in the Leaſe, to his ſaid Friend the Leſſee.

"Note there is a diverſity beeween Livery of Seiſin of Land, and the delivery of a Deed, for if a man deliver a Deed without ſaying any thing, it is a good delivery, but to a Livery of Seiſin of Lands words are neceſſary; as taking in his hand the Deed, and the Ring of the door (if it be of an houſe,) or a Turfe or Twigg (if it be of Land,) and the Leſſee laying his hand on it, the Leſſor ſays to him, Here I deliver to you Seiſin of this houſe, or of this Land, in the name of all the land contained in this Deed, according to the form and effect of the Deed.

This being done, and the Leſſee going away, whoſoever after that ſtays in the houſe, or whoſoever enters next into the houſe, whether Maſter, Servant, or ſtranger, is an Ejector, and is proper to be made Defendent.

In case you find no Ejector, you may, if you so think fit, appoint one to that purpose.

The Lease being sealed, and delivered to your Friend as before, the Party appointed to be the Ejector, may go into the house, and thereby the Lessee going away, he is become Ejector.

Where you thus appoint an Ejector, you must be sure to give notice to the Tenant of the Land, to defend the Title upon the Ejectors appearance.

Where the Tenant of the Land hath but a Lease, he must give notice to the Lord in whom the Fee-simple is, that he may be ready with his Evidences, *&c.* to defend the Title.

Note, that if you cannot come into the house, you may deliver the lease upon the lands, in the name of the house and land contained in the lease, and he that comes next after your going away, upon the land, is an Ejector.

Where it cannot be proved that the Lessee after the lease made, did enter and was possessed, this Action will not be maintainable, and therefore we must now say something of the Entry of the Lessee.

1. He must make such an Entry as to gain the possession, for he cannot be ejected out of the possession of that wherein by law he never was.

2. His possession must continue; for if upon sealing of the Lease, and the delivery of it to the Lessee upon the premisses, the lessor leave him upon the house or land, and that he be outed, or come away, *&c.* and another enter; whether it be a continuance of the same Tenant in possession, or the Entry of a stranger; here his possession is discontinued, and any of those parties are Ejectors.

For the Ejectors take this:

The Entry of a man upon the Land after the lease sealed, or the putting in the Beast upon the land, in the

the like case is an Ejectment.

The continuance of the same Tenant in possession, that was in the time of the sealing of the Lease, is an Ejection, and the Tenant an Ejector.

Where a Lease is made to try the Title, and the Servants of the former Possessor enter with their Master's Carts to do their utmost, and the Action is brought against the Master; it is maintainable without proof of the Master's Commandment for this Entry.

In some Cases this writ lyes, and not in others.

It lyes of a Mannor-house, Land, Meadow, Pasture, Tythe, or such like things.

It lyes of an Orchard; It lyeth of a Kitchin; It lyeth of a Chamber; it lyeth also of a Coal-mine; It lyeth also of a Bailywick.

It lyeth not upon a Lease of a Stock of Cattel, nor upon a lease of a sum of Money, nor of a Watercourse.

The writ must set forth the certainty of the thing, both for quantity or quality, as so many Messuages, so many Cottages, so many Acres of Land, so many Acres of Meadow, so many Acres of Pasture, *&c.*

If your entry be toll you must bring the real action.

THis Action is the most general Action now in use, for tryal of a Title, and comes in place of many real Actions which were both very tedious, difficult and chargeable. This lyes where a man makes a lease to another of lands, houses, *&c.* And seals and delivers it upon the Premisses, and leaves the Lessee in possession, and afterwards the Lessee is outed by the Entry of a stranger.

And in bringing this Action, he must have recourse to his lease, both for the thing demised, and the Term, and the date of the Demise, and the place precisely where the land lyes, but those only

are

are to be mentioned in the Count, but not in the writ

You must be sure your Original bear Teste, after the entry of the Ejector.

In this Action is recovered the possession of the Land or House demised, and that by an Execution of *Habere Facias possessionem*, which is awarded upon the Judgment Roll, and also damages.

The Process in it are Original, *Capias*, *Alias*, &c.

The Original runs thus:

REX, &c. *Vic. Midd. salutem, Pone per vad. & salvos pleg. C. D. nuper de* London *Gen. Ita quod sit coram Justic. nostris apud Westm. tali die ad respondend. W. J. de placito quare vi & armis unum Messuagium, unum Gardinum, decem acras terræ, tres acras prati, & tres acras pasturæ cum pertin. in D. in Com. tuo quæ S. W. vid. eidem W. dimisit ad terminum qui nondum præteriit intravit. Et ipsum a firma sua ejecit, & alia enormia ei intulit ad grave damnum ipsius W. & contra pacem Dom. Regis nunc*, &c. *T.* &c.

This is the Form of your Original, and must be made by the Cursitor of the Shire where the Land lyeth.

Note, that although in your Lease you many times name several Closes, either of land, meadow, or pasture, by their particular names, yet in your Writ you must name the quantity of Acres of each, and how many Houses, Mills, &c. Note, an Ejectment will not lye of a Cottage.

After your Original is sued out, and a *Nihil* return'd thereupon, you proceed to take out a *Capias*, and so arrest the Ejector; but if you cannot arrest upon the *Capias*, you may, as in other Actions, proceed to the Outlawry.

But this way of sealing of Leases, and the proceedings afore-mentioned are now out of use; and now the course is to draw a Declaration against an Ejector nomi-

nominated by your self, and to leave a Copy of the said Declaration, with the Occupier of the house or land, with this or the like Indorsement:

John B. You may perceive, that I am sued for the Messuage and Lands within mentioned being in your possession: These are therefore to desire you to defend your Title, or else I shall suffer Judgment to be entred by Default.

Or thus: Unless the Tenant in possession, or they under whom he claims, do next *Trinity* Term appear to this Declaration, and make him or themselves Defendents thereunto, and by Rule of Court confess the Lease, Entry, and Ejectment, and insist only upon the Title, upon the Tryal, the Defendent in this Declaration will confess Judgment, and possession will be delivered accordingly to the Plaintiff, and you turned out of possession.

To A. B. *Tenant in possession of the Premisses within mentioned.*

Your Friend *JOHN DOE.*

"Yet I thought it necessary to shew the old "course, which by disuse might not be understood "in case there should be cause to restore it again.

"To this the Tenant may appear by his Attor- "ney, and consent to a Rule with the Plaintiff's "Attorney, to make himself Defendent in the room "of the Casual Ejector, and to confess Lease, Entry, "and Ouster, and at the Tryal to stand upon the "Title only, or in Default hereof Judgment to be "entred against the Casual Ejector.

"If the Tenant in possession do not appear in due "time, after the Declaration left with him, and "enter into a Rule as is aforesaid, then upon *Affida-* "*vit* made of the service thereof, and notice given "him to appear, the Court upon Motion will order

Judg-

" Judgment to be entred againſt the Caſual Ejecto
" For if the Defendent plead nothing to this Actio
" but let it paſs by *Nihil dicit*, the Judgment canno
" be had upon a Common Rule, as in Actions of Deb
" they paſs, and ſuch like, but by motion of Court
" becauſe it is to alter the poſſeſſion.

The Declaration goeth thus:

Mich. xvi. *Secundi.*

Robinſon.

MIdd. *C. H. Nuper de London Gen. Attachiat. fu ad reſpondend. W. J. de placito quare vi & a mis unum Meſſuagium, unum Gardinum, decem acras te ræ, tres acras prati, & quatuor acras paſturæ cum pe tin. in H. qua S. W. vid. eidem Will. dimiſit ad termin qui nondum præteriit intravit & ipſum a firma ſua præd ejecit & alia enormia ei intulit. Ad grave damnum ip ſius Will. Et contra pacem Dom. Regis nunc, &c. E unde idem W. per J. H. Attornat. ſuum queritur quo cum præd. S. primo die Octobris, Anno Regni Dom. Re gis nunc quinto decimo apud H. præd. dimiſſet præfat W. Tenementa præd. cum pertin. habend. eidem W. & aſſign. ſuis a feſto Sanct. Mich. Arch. tunc ultimo præ terito uſque finem & terminum trium annorum extunc prox. ſequen. & plenar. complend. & finiend. virtute cu jus dimiſſionis idem W. in Tenementa præd. cum pertin intravit & fuit inde poſſeſſionat. Et ſic inde poſſeſſionat exiſten. præd. C. poſtea ſcilicet eodem primo die Octobri Anno Regni dicti Dom. Regis quinto decimo ſupradict vi & armis, &c. Tenementa præd. cum pertin. qua præd. Sara præfat. W. in forma præd. demiſit ad termi num præd. qui nondum præteriit intravit. Et ipſum a fir ma ſua prædicta ejecit ac alia enormia, &c. Ad grav damnum, &c. Et contra pacem, &c. Unde dicit quod deterioratur eſt & damnum habet ad valenc. decem librarum. Et inde producit ſectam, &c.*

E

Et prad. C. per G. A. Attornat. ſuum venit' & defend. vim & injur' quando, &c. Dil. uſque Oct ab. Hill.

After this Declaration is delivered, the perſon whoſe intereſt is concerned, ought to retain an Attorney, who is to give his Clients Name to the Plaintiffs Attorney, that ſo he may be made Defendent inſtead of the Caſual Ejector. And then a Rule is to be entred by conſent as follows:

Robinſon, *Paſch'* 15. Caroli *Secundi Regis.*

D. verſus M. in ejectione firmæ de terris & Tenementis in H. in Com. M. ex dimiſſione E. P. { *Ordinat' eſt per Cur' ex aſſenſu J. H. Attorn' quer' & J. R. Attornat' pro T. W. de W. in Com' E. prad' Yeom' quod idem* Tho. *admittatur defend' qui indilate comparebit per Attorn' ſuum prad' & recipiet narrationem ac placitabit ad inde generalem exitum hoc Termino: & ad triationem ſuper inde habend' idem T. comparebit in propria perſona ſua aut per ejus Conſilium vel Attornat. Et cognoſcet dimiſſionem, intrationem & actualem expulſionem, vel quod in defectu inde intretur Judicium verſus defend' G. M. caſualem ejectorem. Sed parcatur ulterior proſecutio verſus eum quouſque prad'* Tho. *in aliquo præmiſſorum defalt' fecerit. Et ex conſilii aſſenſu ulterius ordinatum eſt per Cur' quod prædict'* T. *nullum capiet advantagium verſus quer' pro ejus non proſecutione ſuper triatione occaſionat' per hujuſmodi defaltam. Sed quod prædictus* Tho. *ſolvet quer' coſtag' per Prothonotar' proinde taxand. Et ulterius ordinat' eſt quod dimiſſor' quer' ſit onerabilis cum ſolutione cuſtagiorum defenden' per Cur' hic aliquo modo taxand. vel adjudicand.*

Then the Defendents Attorney may put in his Clients Plea of *Not guilty* to go to Trial.

Here you have an Iſſue joyned, which if you intend to try, you muſt proceed as is directed you in other Actions, and ſo conſequently for your Judgment after Verdict.

In

In this Action, as I told you, there is poſſeſſion recovered as well as damages, and for Execution in both, which is for poſſeſſion, your *Habere facias poſſeſſionem*, which is made you moſt uſually by the Clerk of the Judgments, after your Coſts are taxed, and the Judgment ſigned; and likewiſe a *Capias ad ſatisfaciendum* againſt the Body for the Damages, or a *Fieri facias* againſt the Goods or Lands, which are alſo made by the Clerk of the Judgments.

Having your Writ of *Habere facias poſſeſſionem* in caſe you cannot voluntarily have quiet and peaceable poſſeſſion, you muſt deliver your Writ to the Under-Sheriff, who will put you into poſſeſſion, and remove whomſoever are in.

The Fees incident to this Action, follow in a Table amongſt others.

In Actions of Account take theſe Obſervations:

NOte, where a Bayliff doth make a Deputy, yet the Writ muſt be againſt the Bayliff himſelf.

If a ſtranger take the profit of my Wife's Land, during Marriage, and I dye, my Executor and not my Wife ſhall have this action.

This Action lyes againſt the Husband, for the receit of his Wife; and againſt the wife and husband, for the receit of the wife whilſt ſhe was ſole.

It lyes againſt a body Politick, as againſt a ſingle man.

It lyes againſt the Keepers of a Park, that have the charge of Deer, as Bayliffs of his Park, *&c.*

"It lyes againſt a Receiver, as when one receiveth "money to the uſe of another, to render an Account, "but upon his Account he ſhall not be allowed his "Expences and Charges; and therefore a man can-"not charge a Bayliff as Receiver, becauſe then the "Bayliff ſhould loſe his Expences and Charges.

"In

"In an Account against a Receiver, the Plaintiff "must declare by whose hands the Defendent re-"ceived the Money, which he shall not do in the case "of a Bayliff.

"If two Joynt Merchants occupy their Stock, "Goods, and Merchandizes in common to their "common profit, one of them shall have an Account "against the other, and shall charge him as *Receptor* "*Denariorum*.

"If there be two Joyntenants, or Tenants in com-"mon of lands, and the one make the other Bayliff "of his moiety, he shall have an Action of Account "against him as Bayliff.

"So there be but three kinds of writs of Account, "*viz.* against one as Guardian, the second against "one as Bayliff, and the third as Receiver: for a man "shall not be charged in an Account as Surveyer, "Controller, Apprentice, Reve, or Heyward.

An Action of Account lyes not in these cases fol-lowing:

1. Where the party sued claimeth the thing to his own use.

2. Where there is no privity between the parties, neither *Ex provisione Legis*, called Privity in Law, as in the case of Guardian; nor in Deed, by the consent of the Party; as when goods are delivered to a stran-ger and not to my use, nor to be delivered over to me, there is no agreement between the parties.

3. When he that hath delivered the things hath taken an Obligation for security of the things deli-vered.

4. Where the party that hath the things hath a bare oversight of them; as a Bayliff of a Plough, and a Shepherd of Sheep, *&c.*

5. "One under the age of one and twenty years, "shall not be charged in any Account, because by in-

"tendment

"tendment of Law, before his full age he hath not "skill and ability to raise and make any Improve- "ment or Profit of Mony, Goods, or Chattels, or "whatever is committed to his charge.

A Bayliff shall have allowance upon his Account, but a Receiver shall have none.

If the Bayliff disburse any thing for his Master belonging to his Office; as to pay his Quit-rent, or the like; or if he be robbed, or suffer loss by other means, without any default in him, it shall be allowed him upon his Account. But if he pay his Masters debts, or lay out any thing else, not appertaining to his Office, this will not be allowed him.

There are two Judgments upon this Writ; the first is, (*Quod computet*) which is interlocutory; the last is, *Quod querens recuperet versus Defendentem*, so much as he is found in arrearages, and *Damna occasione interplacitationis*.

The first is to account only, and upon this the Defendent may be outlawed; and then before Outlawry, if he appear and enter into account, and be found in arrearages, the Plaintiff shall have a definitive Judgment for the arrearages; and after the first Judgment, no abatement can be for any cause; but a Discontinuance or a Non-suit may be.

The first Judgment is but an award of the Court, like to a writ of Enquiry of Damages, and not like a final Judgment; for there the Action is clearly determined: and these two Judgments depend one upon another; for if Judgment be to account, and the Plaintiff die before he hath accounted, the Executor cannot go in that Suit, but he must begin again, and no writ of Error will be upon the first, till after the second Judgment.

Replevin and Avowry.

REplevin and Avowry comes in the next place to * be handled, as that which brings a Title many times in question, by reason of the Avowry: wherein we shall shew you the nature of the Action, and in what Cases it lies, and for what things, what is incident to it by way of proceeding. And to give you the fuller knowledge of this Action, we will begin to treat briefly of Distresses in general.

* Replegiari *is compounded of* Re *and* Pleg, *which is as much as to say, to deliver upon Pledge*, Co. Lit. 145. *b.*

Distress is a thing which distrained in a House, or upon any Land for Rent behind, or other Duties or Services, or for hurt done, although the property of the thing belongeth unto a Stranger: But if they be Cattel that belong to a Stranger, it is requisite that they were * levant and couchant upon the same ground; that is to say, That the Beasts have been upon the ground a certain space, and have well rested themselves there, or else they are not distrainable for Rent or Service.

* *They are distrainable for rent, albeit they have not been levant and couchant, but not for Damage Feasant.*

And if a man distrain for Rent-Services, or other thing, without a lawful cause, then the party grieved shall have a Replevin, and upon † Security found to pursue his Action, shall have the Distress delivered to him again: But there be divers things that be not distrainable, *viz.* another mans garment in the house of a Taylor, a strangers Cloth in the house * of a Fuller, Shearman, or Weaver; for that they be common Artificers, and that the common presumption is, that such things belong not to the Artificers in their own right, but to other persons which put them there to be wrought: The Lessor * cannot distrain Fats fixt by the Lessee, or a Dying-Pan,

† *See for this* 2. Inst. *upon* 2. cap. *of* W. 2.

* *Co. Lit.* 47.

† *Ibid.*

* *Ibid.*

although the Leſſee may remove them during his Term, 10 *H.*7.21.

The Leſſor cannot diſtrain Glaſs fixt by the Leſſee for his Rent, 21 *H.*7.26.

The Lord cannot diſtrain Shocks of Corn for his Rent, but doing damage he may; Sheaves of Corn in a Cart may be diſtrained, Victuals is not deſtrainable, 21 *H.*7.41.

A Diſtreſs ought always to be made of ſuch things whereof the Sheriff may make Replevin, and deliver again in as good caſe, as they were at the time of the taking.

A man may diſtrain for homage of his Tenant, for Fealty and Eſcuage, and other Services.

He may diſtrain alſo for Fines and Amerciaments, which be aſſeſſed in a Court-leet; but not in a Court-Baron, unleſs by Preſcription.

He may likewiſe diſtrain for Damage-feſant, that is to ſay, when he findeth the Beaſts or Goods of any other doing him wrong, by eating his Graſs or Corn, or trampling them down, or for encumbring his ground.

Note, A man may not diſtrain for any Rent or thing due for any Land, but upon the ſame Land that is charged therewith.

But in caſe, when a man comes to diſtrain, the other ſeeing his purpoſe, chaſeth his Beaſt or Cattel away,* or beareth his Goods out, to the intent they ſhall not be taken for a Diſtreſs upon the Ground, in ſuch a caſe I may well purſue; and if I take it preſently in the High-way, or in another mans ground, the taking is lawful as well there as upon the Land charged, to whomſoever the property of the Goods be.

And for Fines and Amerciaments, which be aſſeſſed in a Leet, one may take the Goods of him that

* Alit. *if the Lord hath not view of the Cattel within his Fee, albeit the Tenant drive them out on purpoſe,* Co. Lit. 161.

that is so amerced, within whose ground soever they be, within the Jurisdiction of the Court, *Avowry* 162.

Where one is amerced in a Leet, and another takes Leather from him, and makes thereof Boots and Shoes, whereby there seems be an altering of the property, in this case those Boots and Shoes being within the Precinct of the Leet, may be distrained for the Amerciament.

Note, when one hath taken a Distress, it behoveth him to bring it to the common Pound, or else he may keep it in an open place, provided that he may give notice to the party who was Owner of it, of his so taking of it, and the place where it is, that he, if the Distress be a quick Beast, may give it food; and then if the Beast or Beasts die for default of food, he that was distrained will receive the loss; for the Party distraining may take another Distress for the same Rent or Duty. Note further, At the Common Law a man might have driven a Distress whither he would: This is restrained by the Statute of *Marlebridge*, cap. 4. and by Stat. 2 *Phil.* and *Mary*.

But if he carry the distress to Hold, or out of the * Country, so that the Sheriff may not make deliverance upon the Replevin, then the Party, upon the Sheriffs return of the Replevin, may have a Writ of *Withernam* directed to the Sheriff, that he take as many of his Beasts, or as much Goods of the other in his keeping, till he hath made deliverance of the first Distress: And also if the Beasts or Goods be conveyed to a Fort or Castle, the Sheriff may take with him the *Posse Comitatus*, that is, the Power of the County to beat down the Castle, as appears by the Statute of *Westm.* 1. c. 17.

* *Note, if the Tenancy be in one County, and the Mannor in another, the Lord may drive the Distress to the Manor.* 2 Inst. 186.

There is a Diſtreſs finite and infinite.

Diſtreſs finite is limited by Law, how often it ſhall be made to bring the party to a Trial of the Action at once or twice.

Diſtreſs infinite is without limitation, until the Party come, as againſt a Jury that refuſeth to appear upon Certificate of Aſſize, the Proceſſes are a *Venire facias*, *Habeas Corpora*, and diſtreſs infinite.

It is divided alſo into Grand Diſtreſs, and an Ordinary Diſtreſs.

A * Grand Diſtreſs is that which is made of all the Goods and Chattels which the Party hath within the County, and ſeemeth ſometimes to be all one with Diſtreſs infinite.

* *The Grand Diſtreſs is the Diſtreſs after appearance, in lieu of a* Petit Cape.

If a man proffer ſufficient amends before the Diſtreſs made, for the wrong done by a mans Cattel, he cannot diſtrain or avow.

Note, it is not lawful for any common perſon to make Diſtreſſes out of their Fee, nor in the Kings High-way, nor in the common Street; but the King might, and ſo might any that were ſubſtituted as his Miniſters, and have ſpecial Authority derived from him, *Per Stat. Marlbr.* cap. 15.

But if the Lord diſtrain in the High-way, the Tenant cannot avoid it in Avowry, for then the King ſhould loſe his Fine, but the Tenant ſhall have an Action therefore upon the Statute of *Marlbridge* cap. 15. *vid.* 2. *Inſt.* 131. and the Statute is not intended of Diſtreſs for Rent-charge, or by reaſon of a Leet.

Thus much for Diſtreſſes in general, we come now to Replevying of the Diſtreſs taken.

This

THis Replevin (as we touched before in Diſtreſs) is a Writ that lieth where any man diſtraineth another for Rent, or other thing, then the Party diſtrained ſhall have this Writ to the Sheriff, to deliver to him the Diſtreſs, and ſhall find Surety (as we ſaid before) to purſue this Action; and if he purſue it not, or if be found or adjudged againſt him, then he that took the Diſtreſs ſhall have again the Diſtreſs, and that is called the Return of the Beaſts, or other things, and he ſhall have in ſuch caſes a Writ that is called a *Returno Habendo*.

Replevins are of two ſorts, by the Common Law, and that is by Writ, by Statute, and that is by plaint, Co. Lit. 145. *b*.

Alſo, if it be in any Franchiſe or Bayliwick, the Party ſhall have a Replevin of the Sheriff, directed the Bayliff of the ſame Franchiſe, for to deliver them again, and he ſhall find Surety to purſue his Action at the next County Court; and this Replevin may be removed out of the County Court into the Common Pleas, by Writ of *Recordare*.

Note, that a man may have a Writ of * *Homine replegiando*, which lies where a man is in Priſon, and not by the ſpecial Commandment of the King, nor of his Juſtices, nor for the death of a man, nor for the Kings Forreſt, nor for ſuch cauſe that is not repleviable, then he ſhall have this Writ directed to the Sheriff, that he cauſe him to be replevied.

See for this more particularly, F. N. B. 66.

This Writ is a *Juſtities*, and not returnable; and if the Sheriff do it not, then there ſhall go out another Writ (*Sicut alias*,) and afterwards another Writ, (*Sicut plures vel cauſam nobis ſignificet*,) which ſhall be returnable; and if the Sheriff yet make no Replevin, then there ſhall go forth an

Attachment againſt the Sheriff directed to the Coroners to Attach the Sheriff, and to bring him before the Juſtices at a certain day, and furthermore, that they make Execution of the firſt Writ.

If a man take living Cattel, and more than one Beaſt, then the Writ of Replevin runs thus:

The Writ of Replevin.

CAROLUS Secundus, &c. Præcipimus tibi quod juſte & ſine dilatione replegiari facias A.B. Averia ſua, videl.

Quæ C. D. cepit & injuſte detinet, ut dicit & poſtea eum inde juſte deduci facias, ne amplius inde clamorem audiamus pro defectu Juſticia, &c.

If it be but one ſingle Beaſt that is taken, then the Writ ſhall be:

CAROLUS Secundus, &c. Præ tibi quod Replegiari facias A.B. quendam Equum ſuum, vel Jumentum quoddam ſuum, quendam bovem ſuum vel quoddam Examen Apium ſuorum quem, &c. quod, &c.

If it be of any dead Cattel, the Writ ſhall go thus:

CAROLUS Secundus, &c. Præ tibi quod Replegiari facias C.D. quoddam Rete ſuum vel quoddam ferrum de Molindin. ſuo.

In his Declaration it behoveth him, to declare of divers things naming them.

But if he take but one thing that is a dead Cattel, then the Writ ſhall be thus:

REX, &c. Quod Replegiari facias A.B. bona & Catalla ſua, &c.

Note, that if the Sheriff return upon the Replevin, the *Alias* or *Plures*, (where the Replevin is to be made within a Liberty or Franchie) that he hath commanded the Bayliff of the Franchiſe, who hath given him no anſwer, or that the Bayliff will not

make

make Deliverance, that then the Plaintiff ſhall have a *Non omittas* to the Sheriff, commanding him to enter into the Franchiſe, and make the return, and if the Sheriff do it not, the Plaintiff ſhall have an *Alias non omittas*, directed to the Sheriff; and afterwards a *Plures non omittas*, &c.

But this Return, *Quod mandavi Ballivo libertatis de* W. &c. *qui nullum dedit mihi reſponſum, &c.* Or the other return, that the Bayliff will make no Deliverance, or no good Returns: For by the Statute of *Marlebridge*, *cap.* 21. in the end of the ſame Statute appears, that the Sheriff upon ſuch a Return made to him by the Bayliff, ought preſently to enter into the Franchiſe or Liberty, make the Deliverance of the thing taken, 2 *Inſt.* 193.

At the Common Law in ſuch a caſe, the Sheriff could not enter into the Liberty, *F.N.B.* 58.

By the Statute of *Marlebridge*, *cap.* 21. the Sheriff may either by Parol or Precept, command his Bayliff to deliver them, and may hold Plea; albeit he be not worth 20 *l.* 2 *Inſt.* 136.

By the Cuſtom of the County of *Northampton*, in the abſence of the Sheriff, the Frank-pledge may make Deliverance.

And if the Sheriff upon the *Plures* return, that the aforeſaid *B.* the Cattel of the aforeſaid *A.* hath taken, and them hath driven out of the County into the County of *F.* by which he cannot replevy them unto him; or if the Sheriff return, that he hath commanded the Bayliff of the Franchiſe of *D.* who hath return of Writs, &c. who hath anſwered him, That the Cattel are eloyned into divers Liberties, that he cannot have the view of them whereby to make deliverance.

And if the Sheriff make return, that he cannot have view of the Cattel, whereby to make Deliverance;

rance; or if the Sheriff return, that after the taking of them, &c. the Defendent hath eloyned his Beasts out of his Bayliwick, by which he cannot make deliverance; or if the Sheriff return, that the Defendent hath eloyned his Beasts into places unknown, by which he cannot come to have a view of the Beasts whereby to make deliverance; or if the Sheriff return, that he hath commanded the Bayliff of the Franchise, &c. who hath answered him, that the Defendent hath impounded the Beasts within the Rectory of the Church of *C.* by which he cannot make deliverance, upon those Returns made by the Sheriff, the Plaintiff may have a Writ of *Withernam*, to take as many of the Beasts of the Defendent; and it shall be directed to the Sheriff, and the Writ shall be thus:

The Writ of Withernam.

REX Vic' salutem, Cum plures tibi præcepimus quod juste & sine dilatione Replegiari faceres Averia sua videl.

Quæ *B.C.* cepit & injuste detinuit (ut dicitur) vel causam nobis significares quare mandatum nostrum alias inde tibi directum exequi noluisti vel non potuisti, ac tu nobis significaveris, quod postquam prædicti *B.* Averia prædicti *A.* cepit in Com. tuo, ea fugavit in Comitatu præd. in Comitatum *L.* per *P.* quod ea eidem *A.* Replegiari non potuisti: Nos malitiæ, ipsius *B.* obviare volentes in hac parte. Tibi Præcipimus, quod Averia præd. *B.* in Balliva tua invent. sine dilatione capias in *Withernam*. Et ea detineas donec eidem *A.* Averia sua prædict. secundum legem & consuetudinem Regni nostri *Anglia* Replegiari possis juxta tenorem mandatorum nostrorum prius tibi inde directorum *T. &c.*

Vide le Register.

Note,

Note, in this Writ of *Withernam*, that whosoever the Sheriff return upon the *Plures*, it ought to be inserted and rehearsed in the Writ of *Withernam*, as is before specified, and if the Sheriff return upon the *Plures*, that he hath commanded the Bayliff of the Franchise, &c. who answered him, that the Cattel are eloyned, &c. then the Plaintiff shall have a Writ of *Withernam*, directed to the Sheriff and the Sheriff shall command the Bayliff of the Franchise to serve the *Withernam*, and if the Bayliff do not Execution, or give not any answer to the Sheriff of the Precept directed to him, then the Plaintiff shall have a *Withernam* directed to the Sheriff, with a *Non omittas propter aliquam libertatem, &c. Quin eam ingrediaris, &c.* and shall take in *Withernam, &c.*

Note, that the Sheriff upon complaint made to him of the taking of Cattel, may command his Bayliff by word of mouth to make Replevin, and this as well as if the Sheriff had made a Precept to his Bayliff to make a Replevin, for it may so fall out, the Sheriff nor his Bayliff may not be able to write, or may want pen, ink, or paper. *Marlb. vi. Inst.* 139.

If a man take Cattel damage feasant, that is, doing hurt, and the Owner offer sufficient amends before the Cattel be impounded, and the party refuseth it, &c. Now if he sue a Replevin of the Cattel, he shall recover damages only for the detaining of them, but not for the taking of them, for that was warrantable; *Co. Lib.* 8. 147, 2. *Inst.* 107. If the Lord or Bayliff come to distrain the Beast of his Tenant for his Rent behind, before the Distress the Tenant may upon the said Lands levy the arrears, and if after that a Distress be taken, it is wrongful, and if the Lord have distrained, if

the

the Tenant before the impounding of them levy the Arrears, the Lord ought to deliver the Diſtreſs, and if he doth not, the Detainer is unlawful.

So in caſe of a Diſtreſs for Damage-feaſant, the Tender of amends before the Diſtreſs, makes the Diſtreſs unlawful, and after the Diſtreſs, and before the impounding the Detainer unlawful.

But if a man bring an Action of Treſpaſs for taking away his Beaſts, there tender of ſufficient amends was no bar before the Action brought, until the Statute of 21 *Jac.*

And if the Lord take the Beaſts of his Tenant wrongfully, and afterwards the Beaſts return unto unto the Tenant, yet the Tenant ſhall have a Replevin againſt the Lord for thoſe Beaſts, and ſhall recover his Damages for the wrongful taking of them.

And if a man diſtrain in one County, and drive the Cattel into another County, the party whoſe Cattel they were may ſue a Replevin in either of the Counties, which he pleaſe, or in both.

And if the Cattel of a Feme-ſole, that is, a womad unmarried, be taken, and afterwards ſhe take a husband, the husband ſolely may ſue a Replevin.

Note in Replevin, if the Plaintiff declare that the Defendent now hath and detaineth the Cattel, &c. and the Defendent appears, and after makes default, the Plaintiff ſhall have Judgment to recover all in damages, as well the value of the Cattel, as damage for the taking of them, and his coſts.

In this Action of Replevin the proceſs are, Summons, Attachment and Diſtreſs, and upon a *Nihil*, proceſs of Outlawry, and then the Original muſt come forth of the Chancery, (except the Sheriff who may make a Replevin, *ex Officia*, which ſhall be tried in the Sheriffs Court, called the County Court)

do

do make it, which is moſt uſual, and then it may be removed forth of the Sheriffs Court by a (*Recordare*) or forth of any Lords Court, or Hundred Court, by an (*Accedas ad Curiam*) upon either of which Writs returnable, either into the Kings Bench or Common Pleas, if the Plaintiff declare not againſt the Avowant for taking his Goods or Chattels, which were taken before, the Avowant is to ſue out a Writ of *Returno habenda*, to be made by the *Philizer* of the County.

And if the Sheriff upon the *Returno Habendo*, do return that the Cattel were eloyned, &c. then a *Capias* in *Withernam*, as was before ſaid, ſhall be awarded to take other Cattel, and if the Sheriff return that he hath no Cattel, then a *Capias* againſt the Body, and thoſe Proceſſes are likewiſe made by the *Philizer* of the County, &c. And the like Proceſs may be had in a Court Baron, in Replevin there.

Having ſhewed you the nature of this Action, and how and in what caſes it lies, and the Proceſſes that are incident to it, we come now to the Declaration upon it.

Devon. ſſ.

I. N. Summon. fuit ad reſpondend. W. D. De placito quare cepit averia ipſius W. & ea injuſte detinuit contra vad. & pleg. &c. Et unde idem W. per J. H. Attorn. ſuum queritur. Quod prædict. J. N. 10 die Maii, *An. Reg. D. Regis nunc decimo quinto apud Dale in quodam loco voc. R. cepit averia videl. quinque juvencas & duos juvencos ipſius W. & illa injuſte detinuit contra vad. & pleg. quouſque, &c. unde dicit quod deterior' eſt & damnum habet ad valenc' decem librarum, & inde producit ſectam, &c.*

The

The Avowry for Damage Feasant.

ET prad. J. per A. B. Attornat. suum ven. & defend. vim & injur' quando, &c. Ac ut Balivus J. E. bene cogn' captionem averiorum prad' in praedicto loco in quo, &c. Et juste, &c. Quia dicit quod idem locus in quo supponitur captionem averior' prad' fieri continet, & prad. tempore captionis averior' prad' fieri supp. continebat in se sexdecim acras terrae cum pertin' in N. prad. Quae quidem sexdecim acrae terrae cum pertin' sunt & prad' tempore captionis prad. superius fieri supp. fuerunt solum & liberum tenement. ipsius W. Et quia averia prad. prad. tempore quo, &c. fuer. in prad. loco in quo, &c. herbam ibidem crescen' depascen. Et damnum ibidem facien. Idem J. N. ut Ballivus prad. J. E. bene cogn' captionem Averior' prad' in praedicto loco in quo. Et juste, &c. damnum ibidem facien', &c.

A Plea in Bar to the Avowry, by a Guardian in Soccage.

ET praedict' W. dicit quod prad. J. ratione pra-allegata ut Ballivus prad. J. E. captionem Averiorum praedictorum in praedicto loco in quo, &c. juste cogn' non debet, quia dicit quod ante tempus captionis praedict' & diu ante praedict' J. E. aliquod habuit in prad. sexdecim acr' terrae cum pertin' quidam R. E. seisitus fuit de Manerio de H. prad. cum pertin' in Com' prad. unde prad. locus in quo, &c. fuit parcell' in Dominico suo ut de feodo. Et sic inde seisitus existen' prad' Maner' cum pertin' unde, &c. tenuit ex dono cujusdam R. W. Mil. ut de Manerio suo de L. in Com. prad. in Socagio scil. per fidelitatem & Annual. Redditum viginti librarum quolibet anno ad festum Sancti Michaelis Archangeli Annuatim solvend. Necnon per servic' faciend' sectam ad Curiam prad. R. Dom. Manerii sui de L. à tribus in tres septimanas apud Maner' prad' Annuatim tenend'. Et prad' R. E. de Maner' de H. prad' cum pertin' unde, &c. sic seisit. exist. obiit inde seisit. Post cujus mortem prad.

Maner'

Maner' cum pertin' unde, &c. descendebat præd. J.E. ut filiæ & hæred' præd' R.E. præd' J.E. ad tunc exist. infra ætatem quatuordec' annor. scil' de ætate duodecim annor' & præd' W. ut proxim' consanguin' præa' J.E. scil' frater Elianor' *ux' præd' R.E. & mater præd' J.E. cui præd' Maner' de H. cum pertin' unde, &c. à præd' J.E. jure hæreditario descendere non posset, per quod custodia dicti Manerii de H. cum pertin' unde, &c. & de præd' J.E. possessionat' fuit eo quod ad idem tempus in quo, &c. præd' J.E. fuit infra ætatem quatuordec' annor'. Et sic inde possessionat' existen' postea & ante præd' tempus captionis, &c. posuit Averia sua præd' in præd' locum in quo, &c. herbam ibid' tunc crescen' depascen'. Ac Averia illa fuerunt in præd' loco in quo, &c. herbam ibid. tunc crescen' depascen' quousque J. præd. die M. Anno* xii. *supradict' apud R. præd' cepit eadem Averia ipsius W. & ea injuste detinuit contra vad' & pleg' quousque, &c. prout idem W. superius versus eum queritur. Et hoc paratus est verificare unde ex quo præd' J. captionem Averiorum præd' in præd' loco in quo, &c. Superius cogn. Idem W. petit Judicium & damna sua occasione captionis & injustæ detentionis Averiorum illorum sibi adjudicari.*

Et prædict' J.N. ut prius dicit. Quod præd' sexdecim acr' terræ cum pertin' sunt & præd' tempore captionis præd' superius fieri supposit' fuer' solum & liberum tenementum præd' J.E. ut superius allegavit, absque hoc quod prædict' W. Mil' tenuit præd' Maner' de H. cum pertin' unde, &c. de præd. R. W. Mil' ut de Maner' suo de L. in Socagio, scil' per fidelitatem & Annualem reddit' Viginti librarum per annum in quolibet Anno ad Festum Sanct' Michael' Archang' Annuatim solvend' & per servicium faciendi sect' ad Cur' præd' R. W. Manerii sui de L. de tribus in tres septimanas tenend' prout prædict' W. superius allegavit. Et

hoc

hoc paratus est verificare, unde petit Judicium & retorn' Averiorum suorum una cum damnis eidem J.N. adjudicari, &c.

Et præd. W. ut prius dicit. Quod præd' R. E. tenuit præd' Maner' de H. cum pertin' unde, &c. de præd' R. W. ut de Manerio suo de L. scil' per fidelitatem & reddit' viginti librarum per annum in quolibet Anno ad Festum S. Michaelis *Archang. annuatim solvend. necnon pro servic' faciendo sectam ad Cur' præd' R.W. Manerii sui præd' de tribus in tres septimanas ad Manerium præd' tenend' pront superius allegavit, et petit quod inquiratur per patriam & præd' J.N. similiter id præceptum est Vic' quod Ven' fac' duodecim, &c. Ad Recogn, &c. quia tam, &c.*

Here you have both a Declaration, an Avowry, a Bar to the Avowry, a Replication, and a Rejoynder, whereby you have a full and compleat Issue made up.

And here note, That this Avowry is for Damage-Fesant; but there are several Avowries, as,

First, a man may avow for services due to his Mannor, as suit to his Court, or suit at the Mill, &c.

Or for a Rent-charge upon Prescription to distrain.

Or for a Rent-charge generally he may avow.

A man may avow for an Amerciament in a Court-Baron.

After Issue joyned, in case you would proceed to a Trial, your proceeds are for the making your *Venire*, and suing out your Record, and *Habeas Corpora*, as in other Actions.

An. 17 *Car.* 2. *cap.* 7. An Act was made for the more speedy and effectual proceeding, upon Distress for Rent.

Partition.

Partition.

THis Action lies in several cases, as where Lands descend by the course of the Common Law, or by Custom, as Gavelkind Land amongst Coheirs or Coparceners, where there must be two at least, whether they be Sons, Daughters, Sisters, Aunts, or otherwise of kin to the Ancestor from whom the Land descended to them. *Co. Lit.* 163.

And this Partition is made four ways for the most part, whereof three are at pleasure, and by agreement amongst themselves, the other when any refuse. *Vid. Avowry, Co. Lit.* 180.

One Partition is, where they themselves divide the Land equally by agreement, into so many parts as there be of them Copartners, and each chuseth one share or part, the eldest first, and so the one after the other as they be of Age, except the eldest by consent made the Partition, then the choice belongeth to the next, and so to the eldest last, according to the old Rule, *He that divides must not chuse*. *Co. Lit:* 105.*b*. *Co. Lit.* 166.*b*.

Another Partition is, when they chuse certain of their Friends to make division for them. *Co. Lit.* 166.*a*.

The third Partition by agreement, is by drawing of lots thus: First, to divide the Land into so many parts as there be Copartners, then to write every part severally in a little Scroll, or piece of Paper or Parchment, and put the same Scroll up close into a Hat or Cap, or other such like thing, and then each Partner, one after the other as they be of age, to draw out thereof one piece or Scroll, whereon is written a part of the Land, which by this drawing is now severally allotted unto them in Fee-simple. *Co. Lit.* 166.*b*.

The fourth Partition, which (as we said) is by compulsion, comes now to be treated of, which is, where one or some of the Copartners would have partition, and other some will not agree thereunto, then *Co. Lit.* 167.*a*.

they

they that would have Partition, may bring a Wr *De partitione facienda*, againſt the others that woul not make partition, by virtue whereof they ſhall b compell'd to part, &c. Tenant *per* Courteſie may b compelled, but cannot compel to make partition by Common Law, *Alit. per Stat. Co. Lit.* 175.

Copartners and Eſtrangers purchaſe the part of one of them, he and one other Copartner cannot joyn in a Writ of Partition, neither by the Common Law, nor by the Statute, but ſeverally they may, *Co. Lit.* 175.

In *Kent*, where the Lands are of nature of Gavel-kind, they call at this day their Partition, ſhifting, which is the ſame with that the *Saxons* uſed, namely *Shaſton*, which ſignifies to make between Coheirs Partition, and to aſſign to each of them their Portion; in *Latin* it is called *Horriſcere*.

Partition may be alſo made by Joynt-Tenants, or Tenants in common by their aſſent by Deed between them, or by Writ, by the Statute of 31 *Hen.* 8. *cap.* 32. and by the Statute of 31 *H.* 8 *cap.* 10. by cuſtom of ſome Burrough, Tenants in common, and Joynt-Tenants may make partition by compulſion by cuſtom, *Co. Lit.* 187.

"If two, three, or more be joyntly ſeized of a "Mannor, to which is appendent an Advowſon, this "Advowſon cannot be divided, becauſe it is entire; "but they ſhall preſent by Turns, the eldeſt Copart-"ner ſhall preſent firſt, and the next in their order.

The Proceſs in this Action is Summons, Attachment, and Diſtreſs infinite.

Your Summons is as follows:

The Summons in Partition.

CAROLUS, &c. *Si A. B. &c. tunc ſum' C. D. &c. quod ſit, &c. oſtenſurus quare cum iidem A. & C. ſimul & pro indiviſo teneant Tres acras terræ cum pertinentiis*

tinentiis de hæreditate quæ fuit A. M. matris prædicto-rum A. & C. cujus hæredes ipsi sunt in J. idem C. partitioni inde inter eos secundum legem & consuetudinem regni nostri Angl. faciend' contradicit & eam fieri non permittat minus juste ut dicit, Et habeas, &c. T. &c.

Aliter pro partitione faciend. pro viro & uxore sua versus tertiam hæredem ubi vir uxoris perquisivit unam partem cohæredum.

Essex ss. CAROLUS, &c. *Vic. Essex salutem. Si W. & J. uxor ejus fecerint, &c. ostensur. quare cum iidem W. & Johanna in jure ipsius Johann. de proparte ipsam de Manerio de T. quod fuit Joannis A. Patris præd. Joh. cujus una hæredum ipsa est contingenti, idemque W. virtute Feoffamenti sibi per Agnetam A. filiam & alteram hæred. præd. Joannis de proparte ipsam Agnetam de eodem Manerio contingenti facti, ac præfata Margareta filia & tertia hæred. ejusdem Joannis insimul & indiviso teneant Manerium prædictum cum pertinentiis: eadem Margareta partitioni inde inter eos secundum legem & consuetudinem, &c. non permittit, &c.*

Note, that the Summons varies in the Case where there are three or four Copartners, and likewise where it is between Joynt-Tenants, or Tenants in Common, the Summons according to their several Cases were too large here to insert.

Having your Summons thus made returnable of any Term, the Defendent may Essoin if he will.

If the Defendent do Essoin, it rests on the Plaintiff's part to adjourn it, as if the Summons, *Tres Michaelis*; he may adjourn to *Crastino Martini*, and then issues out from the Philizer, a Writ called a *Pone*, returnable, *Octabis Hillarii*, and then upon that returned by the Sheriff, you must file your *Pone* with the Philizer, which warrants the making out of a *Distringas*, returnable *Octabis Purificationis*,

and upon that get an Amerciament of five pounds; if the Defendent appear not, then you may have an *Alias Distringas*, returnable in Easter Term, doubling the Issues, and so to Distress infinite till he do appear.

Where the Defendent as before doth cast an Essoyn, and there is no adjournment made thereof, the Defendent may enter a *Nonsuit* against the Plaintiff, if he be careful first to enter a *Ne recipiatur* with the Clerk of the Essoyns, upon the day of the Exception, upon which *Nonsuit* the Plaintiff must begin again.

Where there are several Defendents, they may have several Essoyns, if they would protract time before appearance; and where they Essoyn not upon the Summons, they may upon the *Pone*.

If they do not Essoyn, but appear, you may declare in your Declaration:

Buck. ff. A. *Et T. Mil. in misericordia pro plur' defalt'. Iidem A. & T. summ' fuer' ad respond' P. T. gen' de placito quare cum idem P. & prad' A. T. insimul & pro indiviso teneant sibi & hæred' suis Maner' de D. cum pertin'. Iidem A. & T. partitioni inde inter eos secund' formam Statuti in hujusmodi casu provis. faciend' contradic' & eam fieri non permittunt minus juste & contra form' Stat' prad' & unde idem P. per J. H. Attornat' suum dic' quod cum idem P. ac prad. T. & A. insimul & pro indiviso teneant sibi & hæred' suis prad' Maner' cum pertin' unde ad ipsum P. & hæred' suos pertin' ad habend' unam partem prad' Maner' cum pertin' in tres partes dividend. Et ad prad' A. & hæred' suos pertin' ad habend' unam aliam partem prad' Maner' cum pertin. in forma prad' dividend. Et ad prad' T. & hæred' suos pertin' ad habend' unam tertiam partem residuam inde in forma prad' dividend' Tenena' eis in seperalitate; Ita quod prad' P. de parte sua praditt'*

ipsum

ipſum de prædᵗ Manerᵗ cum pertinᵗ contingenᵗ. Ac prædᵗ A. de parte ſua ipſum de prædᵗ Manerᵗ cum pertinᵗ contingenᵗ. Ac prædᵗ T. de parte ſua ipſum de prædᵗ Manerᵗ cum pertin. contingenᵗ ſeparatim appruare ſe poſſint, Iidem A. & T. partitioni inde inter eos ſecundum formam Statuti in eodem Caſu proviſ. faciendᵗ contradicunt & eam fieri non permittunt minus juſte & contra formam Statuti, &c. Et inde dicᵗ, &c.

In theſe Actions the Pleas are various, as the Title may be.

The Defendent may plead the Freehold ſolely in himſelf at the time of the Plaintiffs iſſuing forth his original Writ, and traverſe, that they hold it together and undivided, &c. whereupon he prays Judgment, whether Partition ought to be between them, &c.

To this Plea the Plaintiff may take the Iſſue upon the traverſe, and if ſo, they may joyn Iſſue, and ſo proceed to Trial.

Upon a Verdict and Judgment had for the Plaintiff, he may have his writ of Partition directed to the Sheriff, commanding him to take twelve Men of the County, and of the *Venue*, in the preſence of the Copartners to make Partition; by virtue of which Writ he ſummons a Jury of the ſaid twelve Men, and in the preſence of the Parties concerned, he makes Partition, and then his Return is as follows:

Executio hujus brevis patet in Inquiſitione huic brevi annex.

VIrtute brevis Domᵗ Regis mihi directᵗ & hujus Inquiſitᵗ Identat. annex. Ego J. D. Miles Vicᵗ Comᵗ prædᵗ x. die A. *anno, &c. aſſumptis mecum duodecᵗ probis & legalᵗ hominᵗ de Comᵗ prædᵗ ac de Vicineto infra ſcripᵗ in præſentia H. L. R. M. in brevi prædᵗ nominatᵗ in propria perſona mea acceſſi ad tenement. in brevᵗ prædᵗ mentionatᵗ ac ibid. per ſacr. ſuum habitᵗ reſpectu*

ad verum valorem eorundem tenementor' cum pertin' tenement' ill' in tres partes equales partiri feci, & unam partem earundem trium partium videlicet, Such and such Lands so abutted and bounded, *Ego præfat' Vic' primo die* Maii, *anno, &c. fieri feci assignat' & allocari H.C. in eodem br' nominat' Tenend' sibi in separalitate secundum formam & effectum brevis præd. Et quoad duas alias partes prædictor' tentor' in brevi præd' specificat' resid. Ego præd' Vic' Justiciar' infra script' certifico quod null. de parte tenement' duas partes me præfat' Vic' recipiend. Ita quod illas duas partes illis alter' duobus assignar' sive deliberare non possum prout breve præd. in se exigit & requirit. In cujus rei testimonium tam sigillum mei præd. Vic.*

A Partition thus made by the Sheriff, and by the Oath of twelve men, and Judgment thereupon given, shall bind an Infant, though his part be unequal, *Co. Lit.* 171. *b.* Provided he appear by Guardian.

Note, a Partition between Joynt-Tenants is not good without Deed, albeit it be of Lands; and that they be compellable to make Partition by the Statute of 32 *Hen.* 8. *cap.* 16. and *cap.* 32. because they must pursue that Act by Writ *De partitione faciend.*

And note, That you are to take out this Writ *De partitione faciend'* executed by the Sheriff, together with the Sheriffs return *verbatim*, into the remembrance in the *Prothonotaries* Office, and then the *Prothonotary* signs Judgment thereupon.

The Fees incident to this Action you will find in the general Table of Fees.

We proceed now to treat of Dower.

DOwer in the Common Law, is taken for that Portion which the Widow hath for term of her life, of the Lands or Tenements of her Husbands, it is called *Dower* or *Dowry*, as a Gift, because the

the Law it ſelf doth (without any gift of the Huſband himſelf) give it to her; it's commonly taken for the third part which ſhe hath of her Husbands Lands after his deceaſe, *Co. Lit.* 31. and *Co. Lit.* 32. *a.*

To the conſummation of this *Dower* three things are neceſſary, Marriage, Seiſin, and the death of the Husband.

This proviſion the Law hath made for a Widow, where the Husband hath not aſſigned in his life time, part of his Lands to his wife. By Gavelkind ſhe is to have half, *dum ſola & caſt.* but ſhe cannot waive it, and take her thirds, *Q. conſ. tollit Communem Legem*, Co. Lit. 33. *b.*

Dower by the cuſtom of ſome places, (as Gavelkind Land, *&c.*) is to have half the Husbands Lands, *Co. Lit.* 30. *b.*

"*Dos*, the very name doth import a Freedom, for "the Law doth give her therewith many Priviledg-"es, *Secundum conſuetudinem regni Mulieres viduæ*, "*&c. debent eſſe quietæ de tallagiis, &c.* And Tenant "in Dower ſhall not be diſtrained for the Debt due "to the King by the Husband in his life time, in the "Lands which ſhe holds in Dower; and other Pri-"viledges ſhe hath; of all which *Ockham* yields the "reaſon, *Doti ejus parcatur, quia præmium pudoris eſt*, "*Co. Lit.* 31.

The Writ of *Dower* lies where a man is ſole ſeized of Lands or Tenements in Fee-ſimple, or Fee-tail, during the Coverture between him and his wife, where by poſſibility the Iſſue between them may inherit, if ſuch a man die his wife ſhall recover the third part of all the Lands whereof the Husband was ſole ſeiſed, any time during the Coverture, by a Writ of *Dower*, though he died not ſeiſed, and although that he made Alienation thereof in his life time.

Where the Husband died ſeiſed, and the wife brings a writ of Dower and recovers, ſhe ſhall recover Damages for the profits of the Land incurred, from the time of the death of her Husband; but if there were any Eſtate or Alienation made of the Lands, &c. during Coverture, ſo that the Husband died not ſeiſed, in that caſe ſhe ſhall recover no Damages for mean profits, although ſhe recover the Land, 2. *Inſt.* 80. *Co. Lit.* 32. *b.*

Dower unde nihil habet lies for a wife that hath received no part of her Dower. The Demand is inſtead of her Count. No ſpecial Eſſoin lies. The Parol ſhall not demur for the Nonage of the Heir. Warranty of the Anceſtor is no bar.

It is not neceſſary that Seiſin ſhould continue during Coverture, for being once ſeiſed it ſufficeth, although he alien Lands, or extinguiſh Rents, yet the woman ſhall be endowed.

But it is abſolutely neceſſary that the Marriage continue, for if that be diſſolved the Dower ceaſeth.

In caſe of *Elopement*, which is where a woman leaves her husband, and goes away with an Adulterer, and dwelleth with the Adulterer, without voluntary reconcilement to her husband, by this ſhe ſhall loſe her Dower, *Co. Lit.* 32. *b.*

"If the Husband be an Alien, the wife ſhall not "be endowed; the wife of an Ideot, *Non compos* "*mentis*, outlawed or attainted of Felony, or Treſ-"paſs, or the like, ſhall be endowed: But if the "Husband be attainted of Treaſon, albeit it be "Treaſon done after the Title of Dower, ſhe ſhall "not be endowed, *Co. Lit.* 31.

A woman ſhall not be endowed of a Common without number in groſs, nor of an Annuity, &c. nor of Rents, &c. If the Freehold of the Rents were ſuſpended before the Coverture; but ſhe ſhall be

be endowed of Tithes of the third part of the profits of Courts, Fines, Herriots, &c. *Co. Lit.* 32.*a.*

She ſhall be endowed according to the value of the Land at the time of the Aſſignment, and not according to the value as it was in the time of her Husband, whether the value of the Land by building, or otherwiſe be improved, or whether it be impair'd by the Heir, *Co. Lit.* 32.*a.*

If the wife be paſt the age of nine years at the time of the death of her husband, (albeit ſhe were but four years old when ſhe was married) yet ſhe ſhall be endowed, *Co. Lit.* 33.*a.*

If a woman marry before ſhe be of years to conſent, which is twelve in a woman, and fourteen in a man, yet that imperfect or inchoate Marriage, (from which neither of the Parties at the age of conſent may diſagree) after the death of the Husband, ſhall give Dower to the wife, *Co. Lit.* 33.*a.*

If the Heir, &c. put her out within forty days, ſhe ſhall have a writ of *Quarentina habenda*, which is a writ that the Law gives, where a man dies ſeiſed of a Mannor place, and other Lands, whereof the wife ought to be endowed, there a woman may abide in the Mannor-Place, and there live of the ſtore and profits thereof for the ſpace of forty days, within which time her Dower is to be aſſigned, as by *Magna Charta*, *cap.* 6, 7. If ſhe marry within the forty days, ſhe loſeth her Quarentine, 2. *Inſt.* 16, 17. See the nature of the writ of *Quarentina habenda*, 2. *Inſt.* 10.

There needeth neither Livery of Seiſin, nor writing to any Aſſignment of Dower, becauſe it is due of common Right, and the Aſſignment muſt be of ſome part of the Land, or of a Rent, &c. iſſuing out of the ſame, *Co. Lit.* 34.*b.*

The Assignment must be certain and absolute, and by such as have Free-hold, or against whom a writ of Dower lies, *Co. Lit.* 34. *b.* 35.

Assignment of Dower must be either by the Sheriff by the Kings Writ, or else by the Heir, or other Tenant of the Land by consent and agreement between them, *Co. Lit.* 34. *b.*

A Joynture was formerly no bar of Dower at the Common Law, but now it is by the Statute of 27 *H.*8. if the Joynture be made to the wife, according to the Statute, *Co. Lit.* 36. *b.*

Six things are required to a perfect Joynture.

First, It is to take effect for her life in possession, or profit, presently after the decease of her Husband.

Secondly, That if it be for term of her own life, or greater Estate, *Co. Lit.* 36, 6.

Thirdly, It must be made to her self, and no other for her.

Fourthly, It must be made in satisfaction of her whole Dower, and not of part, &c.

Fifthly, It must be either expressed or averred to be in satisfaction, &c.

Sixthly, It may be made either before or after Marriage.

If the Joynture be made before marriage, the wife cannot wave it, and claim her Dower at the Common Law: but if it be made after Marriage, she may wave the same, *Co. Lit.* 36. *b.*

A Joynture made to the wife above or under the age of nine years, is good.

The wife shall not be endowed of the Lands which the Husband holdeth joyntly with another at the time of his death, &c. for that the Joynt-tenant which surviveth, claimeth the Lands by the Feoffments, and by the Survivorship which is above the

Title

Title of Dower; but the Tenants in common have ſeveral Free-holds and Inheritances, and their moieties ſhall deſcend to their ſeveral Heirs, and therefore their wives ſhall thereof be endowed, *Co. Lit.*

THe Proceſs incident to this Action of Dower, are,

Firſt, A Summons between the *Teſte* and Return, whereof there are five Returns, *Per Stat.* 16 *Car. c.* 6.

And if the Tenant never appear, nor caſt an Eſſoin, entring a *Ne recipiatur*, a grand *Cape* lies to ſeiſe the Lands, &c. for that for ſuch his default the Tenant ſhall loſe his Land.

But if he wage his Law of *Non-Summons*, he ſhall ſave his default, and then he may plead with the Demandant. Note, that if he wage his Law, the Writ abates, and the uſual way is to remit the default; no ſpecial Eſſoin lies.

NOte, that in a grand *Cape* the Tenant ſhall be ſummoned to anſwer to the default, and further to the Demandant; but in *Petit Cape*, he ſhall be ſummoned to anſwer to the default only, and not to the Demandant, and it is called a *Petit Cape*, becauſe it inclines leſs than the other.

And if the Tenant by the Return of the Summons, eſſoins, the Demandant adjourns *five returns*, in ſuch caſe the Attorney for the Tenant may enter with the *Philizer*, that the Tenant appears and prays view, &c.

Then a Writ of View* goes out, whereby the Sheriff is to ſhew the Tenant the Lands in queſtion, which ſuppoſeth the Tenant knows not well what Land it is that the Demandant asketh, by the return of which Writ of View, the Tenants Attorney takes a Declaration.

*unleſs the View be counterpleaded, of which ſee 2 Inſt. 48.

NOte, that where default is made before appearance, there, at the Demandant his ſuit, the grand

grand *Cape* is made by the *Philizer* of the County where the Land lieth. Note, the *Petit Cape*, after appearance and declaration received, is not made by the *Philizer*.

The Form of a Summons, Reg. 170.

Pr' A. quod juſte, &c. reddat B. quæ fuit ux' C. rationabilem dotem ſuam, quæ eam contingit de libero tenemento, quod fuit præd' C. quondam viri ſui in N. unde nihil habet, ut dicit, &c.

In caſe the Tenant appear upon the Summons, &c. then you declare as follows:

Hill. 16 *Car. Regis.*

Eſſex ſſ. A. *C. vidua quæ fuit ux' Jo. C. Clerici per N. C. Attorn' ſuum pet. verſus E. C. tertiam partem unius Meſſuagi, unius horrei, unius ſtabuli, unius gardini, unius pomarii, duodecim acrarum terra, ſex acrarum prati, & ſexdecim acrarum paſturæ cum pertin' in B. ut dotem ipſius* Aliciæ *ex dotatione prædict'* Johannis *quondam viri ſui per breve Dom. Regis de dote unde nihil habet, &c.*

Et prædicta E. per C. N. Attorn' ſuum ven' & petit viſum de ten'tis prædict' cum pertin', &c. habeat, &c. dies dat' eſt partibus prædictis hic uſque à die Paſchæ in quindecem dies, &c.

Et præd. D. per W. K. Attorn' ſuum ven' & dicit quod ipſe non poteſt dedicere Actionem præd' M. præd' nec quin eadem M. dotem ſuam de præd' uno Meſſ. &c. cum pertin' unde, &c. ex dotatione præd' C. habere debeat prout eam ſuperius pet'. Et dic' quod ipſe à tempore mortis præd' C. hucuſque paratus fuit & adhuc exiſtit ad reddend' præfat' M. dotem ſuam præd. Et illam præd' M. hic in Cur. reddit. Ideo conſ. eſt quod præd' M. recuperet dotem ſuam verſus præfat' D. de tertia parte præd' cum pertin' & nihil de miſ. præd' D. quia ven. primo die per ſum', &c.

Linc.

Linc. E. D. vid' *quæ fuit uxor' G. D. per J. H. Attornat' ſuum petit verſus J. D. Tertiam partem decem meſſuagiorum, ducent' acrar' terræ, trecent' acrarum prati, & ducent' acrarum paſturæ cum pertin' in C. & B. ut dotem ipſius E. D. ex dotatione præd. G. D. quondam viri ſui, &c.*

To this Action there may be ſeveral Pleas, as the caſe may require.

The moſt general Plea is (*Ne unques ſeizi que Dower*) that is to ſay, That the Husband was never ſeized of any Eſtate, whereof the wife can be endowed, the form whereof is as follows:

Ne unque ſeizi que Dower pleaded in Dower.

ET *præd' G. per J. F. Attornatum ſuum ven' & dicit quod præd' E. dotem de Tenementis prædictis cum pertin' unde, &c. ex dotatione præd' G. quondam viri ſui habere non debet, quia dic' quod id. G. quondam vir' die quo ipſe præfat' E. deſponſavit nec unquam poſtea fuit ſeiſit' de tenementis præd' cum pertin' unde, &c. de tali ſtatu ita quod prædict' Eliz. inde dotaſſe potuit, & de hoc pon', &c.*

There is a Plea likewiſe of *Non tenure*, which is as follows:

Non-tenure pleaded in bar of Dowry.

ET *præd' R. per A. B. Attornat' ſuum ven'. Et dic' quod ipſe Manerium præd' cum pertin' ut dotem ipſius M. reddere non poteſt quia dic' quod ipſe non eſt inde tenens ut de libero tenement' nec fuit die impetrationis brevis præd'* Mariæ *nec unquam poſtea, & hoc parat' eſt verificare, unde pet' Judicium de brevi præd', &c.*

ET *præd'* Maria *dic' quod breve ſuum præd' ratione præallegat' ceſſari non debet, quia dicit quod die impetrationis brevis ſui præd' ſcil' 20 die M. An. decimo quinto Regis nunc, præd' R. fuit tenens ut de libero tenemento de Manerio præd' cum pertin' prout per breve*

ſuum

ſuum prad' ſupponitur. Et hoc pet' quod inquiratur per patriam. & prad' R. ſimiliter, ideo præcept' eſt vic' quod venire fac' hic in octabis S. Trinitat' duodecim, &c. per quos, &c. & qui nec, &c. qui tam, &c. Ad quem diem hic ven' partes, &c. Et Vic' non miſ. breve, ideo ſicut prius præcept' eſt vic' quod, &c.

Nonage in bar of Dower.

ET prad' R. per T. S. Attornat' ſuum ven' & dic' quod prad' N. in hac parte dotationem habere non debet, Quia dic' quod præfat' N. tempore mortis prad. R. quondam viri ſui ex cujus dotatione, &c. non fuit plen' ætat' ut dotem ſuam mereri potuit ſcil. de ætate Novem Annorum & Dim' & hoc parat' eſt verificare unde pet' Judicium, &c.

ET prad. N. dic' quod ipſe præfat' N. tempor' mortis ipſius prædict. B. quond. viri ſui, &c. de tal. ætate fuit, ita quod mereri potuerat dotem ſcil. de ætate Novem Annorum & Dim' & amplius, & hoc petit quod inquiratur per patriam & prædict. R. M. ſimiliter. Ideo præcept. eſt Vic' quod ven' fac' duodecim, &c.

Elopement in bar.

ET prad' J. & L. per T. L. Attornat' ſuum ven. & dic' quod prad' R. & A. dotem de Manerio & tenementis prædict. cum pertin' ex dotatione prædict. E. quondam viri prad. A. habere non debent quia dic' quod prad' A. in vita prad' E. quondam viri ſui ſponte & gratis apud B. in Com. M. de eodem viro ſuo receſſit & ab eo cum M. R. abiit & ſe elongavit in parochia de C. in Com. M. & poſtea ibidem cum eodem M. (vivente prad' E. quondam viro ſuo) in adulterio moram traxit durante vita prad' E. quondam viri ſui abſque hoc quod prad' A. eidem E. quondam viro ſuo in vita prad' E. quondam viri ſui reconciliata fuit, & hoc parat' eſt verificare, unde petunt Judicium utrum prad' R. & A. in

hac

hac parte dotationem habere debeant de Manerio & tenementis præd' cum pertin' de dotatione præd' E. quondam viri præd' A. &c.

ET præd. R. & A. dicunt quod ill. per aliqua præallegata ad habend' dotationem de præfato A. de Manerio & tenementis præd' cum pertin' versus præfat' J. & L. secludi non debeant quia dicunt quod post recessum, præd' A. per præd' J. & L. suppositi' fieri, præd' E. tempore vitæ suæ, ipse præd' E. sponte & gratis absque coertione Ecclesiastica apud L. se reconciliavit & permisit ipsam secum commorari, & hoc parat. sunt verificare unde pet' Judicium & dotem ipsius præd' A. de Maner. & tenem' præd' cum pertin' una cum damnis suis occasione detentionis dotis præd' adjudicari, &c.

Et præd' J. & L. dicunt quod præd' E. in vita sua non reconciliavit se modo & forma prout præd' R. & A. superius allegav' & de hoc pon' se super patriam. Et præd' R. & A. similiter, ideo præcept' est Vic', &c. duodecim, &c.

A man may call to Warranty in Dower, and then is the Party called to Warranty summoned in the County where he lies, and that by the aid of the Court, and this is called a Counterplea of the Voucher in Dower, and is thus:

Counterplea of Voucher in Dower.

ET præd' I. per C. B. Attorn' suum ven' & vocat' inde ad Warrant' R. C. gen' summon' in Com. præd' per auxilium Cur', &c.

To this the Defendent may reply, that the Party calling to Warranty, hath nothing in the Lands, &c.

Et præd' I. dic' quod nec præd' R. quem, &c. nec aliqui anteces'or. suor. aliquid habuit sive habuerunt in tenementis præd' cum pertin' in dominico suo ut de feodo in revertione, &c. à tempore mortis præd' W. C. quondam

dam viri ſui uſque diem emanationis brevis original' dict' J. F. ſcil' 10 die Maii, *anno Regni Dom' Regis nunc decimo quinto per quod enfeoffar' potuit præd' I. aut aliquis anteceſſor' ſuor'. Et hoc petit quod inquirat' per patriam & præd' I. ſimiliter ideo præcept' eſt vic' quod ven' fac' duodecim, &c.*

An Annuity may alſo be pleaded in bar of Dowry, but is too long here to recite.

To this Action, in caſe the Tenant hath no ſpecial matter to plead in bar, then he may confeſs an Action by *Non ſum informatus*, or let it paſs by default, as in the enſuing.

Non ſum informatus in Dower.

ET præd' E. per T.S. Attorn' ſuum ven'. Et prædict. Attorn' dic' quod ipſe non eſt informat' per eundem E. magiſtrum ſuum de aliqua reſponſione pro eodem E. præfat' P.S. in placito præd' Dand' & nihil aliud inde dicit per quod præd, P.S. reman' verſus præd' E. inde indefenſus. Ideo conſiderat' eſt quod præd' P.S. recuperet ſeizin' ſuam verſus præd' E. de tertia parte præd' manerii, Parci, liberi warren. tentor' & advocat' præd' cum pertin'. Et præd. E. in miſericordia, &c. Et ſuper hoc præd. P.S, petit breve Dom Regis vic. Com. prædict. dirigend. de habere fac. ei plenar. ſeizinam de tertia parte prædict. cum pertin. Et ei concedit retornabile hic in Octabis ſcil. Mar. *Et ulterius præd. P.S. dic. quod præd. E. quond. vir ſuus obiit ſciſit. de manerio, &c. in dominico ſuo ut de feodo ac de advocatione prædict' ut de feodo, & jure, & pet. breve Domini Regis Vic. Com. præd. dirigen. Ad inquirend. de damnis, & ei conceditur retornabile, &c.*

Note, That in this, as in other real Actions, when you plead for the Tenant, you ſay only (*Comes and ſays*) and not as in other Actions, defends the force and injury, &c.

When

When Iſſue is joyned, if you would go to Trial, you muſt proceed with your *Venire facias*, and *Habeas Corpora*, and record as in other Actions, and upon Trial, the Jury to give in Damages* for the mean profits, from the death of the Husband, and for that you ſhall have Execution made by the Clerk of the Judgments, who entred up your Judgment.

*If her Husband die ſeiſed per Statut. Mer. cap. 1.

And then you have a Writ to the Sheriff to give poſſeſſion of a third part, &c. which Writ being executed by the Sheriff, is thus returned.

Note, If the Tenant make default at the Aſſize, you muſt have a *Petit Cape* before grant of Seiſin can be awarded.

The Return on the back of the Writ.

EXecutio iſtius brevis patet in quadam ſchedula huic brevi annex.

The Schedule.

VIrtute brev' Dom' Regis mihi direct' & huic ſchedulæ annex. (primo die Maii *anno, &c.) habere feci J. B. vid' in præd. brevi nominat. plenar. Seiſinam de tertia parte Maner. de B. cum pertin. in eodem brevi ſpecificat. videl.* (and rehearſes particulars *ut in brevi*) *Tenend. præfat. J. B. in ſeperalitate per metas & bundas nomine totius dotis ipſius J. ipſi J. contingen. de toto Manerio in dict. brevi ſpecificat. prout per præd. mihi præcipitur.*

Formedon.

Formedon is a Writ of Right in its nature, which entitles the Demandant according to the form of the Gift.

The firſt is *Formedon* in the *Diſcender*, which lieth where Tenant in Tail enfeoffed a ſtranger, or is diſſeiſed and dieth, the Heir ſhall have a Writ of *Formedon* to recover the Eſtate, *F. N. B.* 211. for the

Forme-

Formedon in *Discender*. See more at large *F. N. B.* an *vet. N. B.* 143.

Formedon in Discender lay not at Common Law but is given by the Statute *W.* 2 *cap.* 1.

The second is *Formedon* in the Remainder, an that lies where one gives Land in tail and for de fault of Issue, the Remainder to another in Tail, an that for fault of such Issue, the Lands shall revert t the Donor, if the Tenant in Tail die without Issue he in the Remainder shall have this Writ. For the *Formedon* in *Rem.* see *F. N. B.* 217. *b. vet. N. B.* 147. *b.*

Form. in Reversion for life or in fee upon a Lease for life expired, for after the Estate tail expired, this Writ did not lie at the Common Law, because it was an Estate of Fee-simple, upon which no reversion can depend.

The third is a *Formedon* in *Reverter*, and lieth where the Tenant in Tail dies without Issue, and he in Remainder dies also without Issue, then the Donor or his Heirs shall have a *Formedon* in Reverter.

For the *Formedon in Reverter* see *F. N. B.* 219. *b. vet. N. B.* 149. *b.*

Formedon in Reverter is for the Donor after the Estate tail determined, as (at the Common Law) if the Donee in tail had aliened, and after died without Issue, or if he had Issue, and after had aliened, and then had died without Issue.

Where Tenant in tail aliens, or is disseised, or if a Recovery be had against him by default, and that he die, his Heirs shall have a *Formedon*, for the Heir shall not have other Recovery for the possession of his Ancestors, then by *Formedon*, but

Vid. *N. B.* 143. *b.* 211. 145. *Kitching* 247. 12 *H.* 49.

but if he be outed of his own poſſeſſion, as if he be ſeiſed and put out, he ſhall have his Writ of Aſſize, *F.N.B.*145.

Formedon lies by the Heir of a Gift made before the Statute of *Weſtminſter* 2. where the Donee after the Statute aliens and dies.

Note, This is where there is Tenant in Dower the Remainder to another in Tail, *Sur intruſion apres mort del Tenant, per* Courteſie, or in Dower.

Where there is a Tenant in Dower, or by the Courteſie, the Reverſion to another in Tail, if one intrude after the death of the Tenant in Dower, to or by the Courteſie, he in the Reverſion ſhall not have intruſion, but a *Formedon*, *F.N.B.*204.

Woman in Tail takes a Husband which aliens, and after they are divorced, and after the husband dies, the Wife ſhall in this caſe have a *Formedon*, and not a *Cui in vita*, *F.N.B.*204.*k*.

If Tenant in Tail lets for life, and the Tenant for life aliens in Fee, the Tenant in tail ſhall have a *Formedon* at his pleaſure, *& conſimili caſu*, *F.N.B.*207.

Where Land is given to one for life, the Remainder to the Father in tail (if it were executed in the Father) and he aliens; the iſſue may have a *Formedon in Diſcender* generally, or may have a ſpecial Writ, making mention how it was given for life, the Remainder to his Father in tail, and one or other is good. 44 *E.*3.6.

In Conveyance of degrees, you need not name him Heir, but Son of him which was not ſeiſed, but it is a ſurer way to name him Son and Heir to every one, if he were ſeiſed or not; but he cannot omit any in his Writs which were ſeiſed, *Kitch.*248.

If the Demandant omit in *Formedon* one who hath held the Eſtate, that is to ſay, who was ſeiſed, the Writ ſhall abate, *Kitch.*248.

The Demandant in this Writ ought to make his Diſcent by all which hold the Eſtate, otherwiſe the Writ ſhall abate, 44 *E.*3.40. 46 *E.*3.9.

Though the Demandant be made Heir to him which died in the life time of his Father, which was not ſeiſed, yet the Writ ſhall not abate, but is good, 48 *E.*3.7.

Note, by the Regiſter it is held, that he ought to make him Son to every one, and Son and Heir to him which laſt holds the Eſtate; but if he makes him Son and Heir to every one that is more, and good, notwithſtanding that every one did not hold the Eſtate, 11 *H.*6.25.

The Writ is not the worſe, although in the ſame it be mentioned, that he is Heir of one, or that he ſhould have ſcarce been Heir to him if he had lived, if he be Heir to him that was laſt ſeiſed, 11 *H.*4.70.

The Demandant in *Formedon* ought to name him Son and Heir to him that was ſeiſed; but if one ſurvive his Father, and were not ſeiſed, he need not name himſelf Heir, but Son only, *F. N. B.* 212. *f.*

Formedon did abate, for that the Demandant made himſelf Couſin and Heir to the Donee, where his Father was ſeiſed after the death of the Donee, and no mention was made of him, 10 *E.*3. *Tit. Form.* 41.

Eſplees ſhall be alleadged in *Formedon in Reverter*, in the Donor and in the Donee, and in *Formedon in Diſcender*, and Remainder in the Donee only, 5 *E.*3. 1. *Fitz.* 220.

In a *Formedon in Diſcender* the Eſplees ſhall be only in the Donee; in a *Formedon in Remainder* for an Eſtate tail, only in the particular Tenant to prove the Eſtate tail executed; in a *Formedon in Reverter* they ſhall be laid in the Donor and Donee, for there a Fee ſimple is demanded. In a Leaſe for life, Remainder in tail, and the Leſſee for life, and he

in

in Remainder in tail dies, the Iſſue in tail ſhall have a *Formedon in Diſcender*, and ſhall not make mention of the Tenant for life; therefore the Eſplees ſhall be only laid in the Tenant in tail, otherwiſe it is in ſuch caſe a Reverſion in tail granted, 9*H.*6.53. 50*E.*3.10.

Thoſe Eſplees is as it were the ſeiſin or poſſeſſion of a thing, profit, or commodity, that is to be taken; as of a Common, the Eſplees is the taking of the Graſs, or Common by the mouths of the Beaſts that common there; of an Advowſon by taking the Tithes by the Parſon preſented thereto; of wood, the ſelling of wood; of an Orchard, the ſelling of Apples and other fruit growing there; of a Mill the taking of Toll is Eſplees, and of ſuch like.

Vide Finch. 79. *How Eſplees ſhall be alledged, and the forms thereof.*

NOte, That in a writ of Right of Land or Advowſon, &c. The Demandant ought to alledge in his Declaration, that he or his Anceſtors took the Eſplees of a thing in demand, or otherwiſe the pleading is not good, 9 *H.*6.53.

Formedon in Remainder, he alledgeth Eſplees in the Tenant for life, and not in the Donor.

Formedon in the Remainder, he counts upon the matter without laying Eſplees in the Donor, and it is good, 27 *E.*3.36.

Of what things a Formedon *lieth, and what not.*

FOrmedon lieth of Gorſe, but not of an Advowſon, *F.N.B.*217.

It lies of Paſture for ten Beaſts, or a certain number, but not of Common; for there a writ called *Quod non permittas, &c. F.N. B.*212.

Formedon lies of a Common in groſs, *Stat.*95.

Formedon lies of a Corody, that is to ſay, of Rent, and certain breads, &c. 18 *E.*3 *Stat.*

It lies for the Moiety or profit of a Mill, which is granted to one and the Heirs of his Body, and the Donee dieth, and his Heir is deforced of this profit; now the Heir ſhall have a writ of *Formedon* in *Diſcender* for this profit.

The form of the Writ, when it is in *Diſcender*, runs thus:

In Diſcender.

REX, &c. Vic' C. ſalutem, Pr. T.B. quod, &c. reddat J.M. medietatem exituum provenien' de duobus molendinis ipſius J.M. cum pertin' in M. quam E.C. dedit S.C. & hæred' de corpore ſuo exeuntibus, & quæ poſt mortem, &c.

In Remainder.

REX, &c. Vicecom' C. ſalutem, Pr. A. quod reddat B. unum Meſſuagium, &c. quod C. dedit D. & hæred' de corpore ſuo exeuntibus. Ita quod ſi idem D. ſine hæred. de corpore ſuo exeunt' obiret, præd' meſuagium præfat' B. & hæred' remaneret & quod poſt mortem præd' F. D. præfat' B. remanere debet per formam donationis præd' eo quod præd' F.D. obiit ſine hæred' de corpore ſuo exeunt' ut dicit, &c.

In the Reverter.

REX, &c. Vicecom' G. ſalutem, Pr' A. quod reddat B. (tantum, &c.) quod C. pater præd' B. cujus hæres ipſe eſt, dedit J. & F. ux. ejus, & hæred' de corporibus ipſorum J. & F. ad præfat' B. reverti debet per formam donationis præd. Eo quod præd' J. & F. obierunt ſine hæred' de corporibus ſuis exeunt' ut dicit. & niſi, &c.

This Writ is called a *Summons*, and hath nine Returns betwixt the Teſte and the Return, and the Proceſs are the ſame which are in Dower after the Summons, that is, a Grand *Cape*, writ of View, and Petit *Cape*.

In

In this Action, as also in that of Dower, and other real Actions, the Plaintiff is called *Demandant*, and the Defendent *Tenant*; and in mixt Actions, Plaintiff and Defendent.

Note, That there is a great care to be taken by the Attornies on both sides, in the course of casting Essoyns, adjourning and entring *Ne recipiatur* with the Clerk of the Essoyns, and getting *Nonsuit*; for that thereby much prejudice or advantage may come to their Clients Causes.

"This writ of *Formedon* is now almost obsolete, "being rarely brought except in some special Ca- "ses where it cannot be avoided, it being tedious, "dubious, and very chargeable; The trying of "Titles by *Ejectione firmæ* supplies the place thereof "at a far quicker and easier rate.

Note, That at the Common Law, in a *Quare Impedit*, the Process was Summons, Attachment, and Distress infinite, by the Stat. of *Marlb.* cap. 12. If he appear not at the Grand Distress, Judgment shall shall be given for the Plaintiff, & a writ to the Bishop.

If we should now in this Action, as in that of Dower, descend to the several Declarations, in order to the several Formedons in *Discender*, *Remainder*, and *Reverter*, together with the various Pleas thereto, it would take up more room than can be spared in this little Tract.

Let it suffice that we told you that the proceedings were much like to that in Dower.

Let us proceed to a Quare Impedit.

Quare Impedit lies, where a Man hath purchased a Mannor, to which an Advowson of a Church is appendent, a Parson dies, and a stranger presents his Clerk, *F.N.B.* 26.

Assise of *Darrein Presentment* lies, where I or my Ancestor have presented to a Church our Clerk,

and after our Clerk dies, ſo that the Church becomes void, and an Eſtranger preſents his Clerk to the ſame Church, and diſturbs me, I may have this Writ, or a *Quare Impedit* at my election, *F. N. B.* 25.

Alſo if the Plea be depending between two Parties, and be not diſcuſſed within ſix months, then the Biſhop may preſent by *Lapſe*, and he that hath right to preſent ſhall recover his damages, as it appears by the Statute of *Weſtm.* 2. cap. 5.

A writ of Right of Advowſon lies as here it is ſaid, *F. N. B.* 26. *b.*

Alſo if one have right to preſent after the death of a Parſon, and bringeth no *Quare Impedit*, or *Darrein Preſentment*, but ſuffereth a ſtranger to uſurp upon him, yet he ſhall have a writ of Right of Advowſon, but this Writ lieth not, unleſs he claim to have the Advowſon to him and his Heirs in Fee-ſimple.

"If a ſtranger had preſented his Clerk, and he "had been admitted and inſtituted to a Church, "whereof another had been lawful Patron, the Pa- "tron had no other remedy to recover his Advow- "ſon, but a writ of Right of Advowſon, wherein "the Incumbent is not to be removed; and if an "uſurpation had been upon an Infant or Feme- "covert having Advowſon by diſcent, or upon Te- "nant for lie, *&c.* the Infant, Feme-covert, and he "in the Reverſion are driven to their writ of Right "of Advowſon, for if the Church were once full "the Incumbent could not be removed, and *Plenarty* "generally was a good Plea in a *Quare Impedit*, or "*Aſſiſe of Darrein Preſentment*.

"And it is to be obſerved, that an uſurpation up- "on a preſentation, ſhall not only put out of poſ- "ſeſſion him that hath Right of Preſentation, but "Right of Collation alſo, therefore the Incumbent

"ſhall

"ſhall be removed in a *Quare Impedit* or Aſſiſe of "*Darrein Preſentment*, if there be not a *Plenarty* of "ſix months before the Teſte of the Writ, but then "the Incumbent muſt be named in the Writ, or elſe "he ſhall never be removed: yet if the Ordinary "refuſeth to admit and inſtitute the Clerk of the "Patron, or when any diſturbed him to preſent, ſo "as he could not prefer his Clerk, he might have "his *Quare Impedit*, or Aſſiſe of *Darrein Preſent-*"*ment*, and if the Church were not full, have a writ "to the Biſhop to admit his Clerk.

A *Quare Impedit* may be brought by him who hath a grant of the next Avoidance.

It lies for the Moiety of the third part of the Advowſon, and of the Advowſon, or Moiety of the third part.

It lies for a Chantry, which is a Donative, and he hath it by Letters Patents, and that it be void, and he preſent to it his Clerk, who is diſturbed by another, or another preſented to the ſaid Chantry, he which hath the Right ſhall have his *Quare Impedit*, *vet. F. N. B.*

Formerly a *Quare Impedit* might be brought for an Abbey or Priory.

A *Quare Impedit* lay likewiſe for an Hermitage, it was brought formerly againſt the Biſhop, together with others that claim or diſturb. The form of the Writ in general is thus:

Quare Impedit.

REX, &c. Vicecom' L. ſalutem, Præcipe A. B. quod juſte, &c. permittat T. L. præſentare idoneam perſonam ad Eccleſiam de L. quæ vacat & ad ſuam ſpectat' donationem ut dicit. Et unde quæritur quod præd. A. eum injuſte impedit. Et niſi, &c.

Note, the Proceſs at Common Law was Summons, Attachment, and Diſtreſs infinite; but *per Stat. Marlb.* 12. if he appear not at the grand Diſtreſs, Judgment ſhall be given for the Plaintiff, *Vide cap.* 2. *Inſt.* 124.

This Writ is a Summons at the Plaintiffs Suit, and if there be two or three Defendents, they may all eſſoyn one after the other, and after they have eſſoyned, your proceeds are the ſame, as in the Action of Partition by a *Pone Diſtringas*, which makes the proceedings of this Action very tedious, the Defendent uſing all poſſible delays he can, for that moſt uſually he hath gotten into poſſeſſion, and ſo holds them plea with their own weapons, and gains many times a year or two the Profits of the Tithes.

This delay is avoided by the Stat. ut ſupra, *and by the ſame Stat. the proceedings are but from* 15 *days, v.* 15 *days,*

But in caſe the Church be void, and that the Plaintiff do fear that the Defendent will get in, or that the Biſhop will Collate his Clerk, then he might have a Writ directed to the Biſhop, which is called, *Ne admittas*, and this Writ muſt be brought while the Action is depending in the Common Bench, whether by *Quare Impedit* or *Darrein Preſentment*, and this Writ ought to be ſued within ſix months after the voidance, for after the ſix months he ſhall not have this Writ; for then the Living may be preſented unto by *Lapſe*, and therefore it is in vain then to ſue this Writ, for that the Title of Preſenting is devolved to the Biſhop; but the King might ſue this Writ after the ſix months, having a Writ of *Quare Impedit*, or *Darrein Preſentment* depending, according to that Maxim, *Nullum tempus occurrit Regi*, and the Writ of *Ne admittas*, is as follows,

follows, in case it were for the King in his time.

Ne Admittas.

REX, &c. Venerabili in Christo Viro W. Divina gratia Lincoln' *Episc' salut' prohibemus vobis ne admittat' personam ad Eccl' de J. quæ vacat ut dicitur, & de cujus advocatione contentio mota est in Cur' nostra inter vos & A. donec discussum fuerit in eadem Cur' utrum ad vos an ad præfat' A. pertinet ejusd' Eccl' advocat' (vel sic) inter A. & B. & C. uxorem ejus donec, &c. utrum ad præd' A. an ad præd' B. & C. pertineat ad ejusdem Eccles. &c. advocatio.*

Note, that the Defendent as well as the Plaintiff, may sue out this Writ, if the Defendent do suppose that the Bishop will admit the Clerk of the Plaintiff, the Suit depending; But, as we said before, this Writ of *Ne Admittas* lies not, unless the Plea be depending in Court by *Quare Impedit* or *Darrein Presentment*, and for that purpose there is a Writ in the Register, directed unto the Chief Justice of the Common Pleas, to certifie the King in the Chancery, whether there be any Plea depending before him and his Companions, by Writ between (such and such) and by this it seemed, that the *Ne Admittas* should not be granted, before the King were certified in Chancery, and such a Plea of *Quare Impedit*, or *Darrein Presentment*, were depending in the Common Bench. But at this time the course is otherwise, that the *Ne Admittas* may be granted out of the Chancery, directed unto the Bishop, that he shall not admit, &c. before that the King be certified in Chancery, that such Plea of *Quare Impedit* or *Darrein Present.* is depending in the Common-Bench.

And if the truth be, that there be no such Plea depending in the Common-Bench, then the Party grieved may require the Chief Justice to certifie the King in his Chancery, that no such Plea is there

there depending, upon which the party grieved shall have a Writ to avoid the *Ne admittas*, *F. N. B.* 38. *b.*

If the Defendent or Defendents in this Action do appear, you must prepare your Declaration, wherein you must lay down your Title, which many times causeth the Declarations and Pleadings to be very long in this Action, and therefore cannot be expected to be inserted here, as in other small ones.

In case after special Pleadings you come to an Issue, and having your Issue joyned, and your Paper-Book made, and that you would go to Trial, you must take your *Venire facias*, which differs not from other *Venire facias*, but only in these words, (of a Plea of *Quare Impedit*) and that made, signed, sealed, and returned, you must sue out your *Habeas Corpora*, and proceed with your record, as in other.

When you have a Verdict for the Plaintiff, and the *Postea* returned, and Judgment entred; you may then have a Writ to the Bishop to admit your Clerk, or to the Metropolitan, which is thus; when the Recovery is had against the Bishop himself.

REX, &c. *Venerabili in Christo Patri* W. *Episcopo* W. *salutem, Cum* T. L. *Miles in Curia nostra, &c. recuperavit versus vos præsentationem suam ad Vicar' de* W. *præcipimus vob. quod ad præsentationem ipsius præd'* W. *ad Vicariat' prædictam idoneam personam admit', &c.*

And if a man have his Recovery against any other than the Bishop, then the Writ that shall be made unto the Bishop shall be in this wise.

CUM T. L. *Miles recuperavit versus* J. P. *præsentationem suam, &c. Præcipimus vobis quod non obstante clamore præd.* J. P. *ad præsentationem præd'* T. L. *admitt' idoneam personam, &c.*

Note,

Note, That upon this Writ he ſhall have an *Alias*, and a *Plures*, if the Biſhop do not execute the Writ, and an Attachment againſt the Biſhop, if need be.

Concerning Actions of Waſte, *Co. Lit.* 54.

THis Action lies where Tenant for term of years, Tenant for term of Life, Tenant for term of anothers life, Tenant in Dower, Tenant by the Courteſie of *England*, or Guardian in Chivalry, doth make waſte or deſtruction upon the Land or Houſes, that is to ſay, pulleth down the Houſe, cutteth down Timber, or ſuffereth the Houſe willingly to fall, or diggeth the ground, then he in the reverſion ſhall have a Writ for the waſte, and ſhall recover the place where the waſte was done, and treble damages againſt him that ſo committed waſte. At the Common Law waſte was puniſhed in three perſons, Tenant in Dower, by the Courteſie and Guardian. There is alſo an Action of waſte by Cuſtom, as in *London*.

And the remedy by the Common Law was, 1. A Prohibition before waſte done. 2. After waſte done an Action of waſte lay, which was alſo in the nature of a Prohibition, and the writ of Prohibition had been ſued, *Quia*, the Law is a Prohibition it ſelf.

"A Prohibition of waſte did lie againſt Tenant "by the Courteſie, Tenant in Dower, and Guardian "in Chivalry, by the Common Law, but not againſt "Tenant for life, or years, becauſe they came in by "their own act, and he might have provided that "no waſte ſhould be done, *Co. Lit.* 54.

And upon a Recovery with Tenant in Dower, by the Courteſie, the puniſhment was twofold, 1. Due to the value of the waſte, and a Keeper appointed to withſtand any waſte.

The

The penalty of the Guardian was, 1. To loſe the cuſtody. 2. To yield the value in damages. 3. He ſhould be Fined to the King.

"If a Guardian doth waſte, and the Heir within "age brings an Action of Waſte, the Guardian "ſhall loſe the wardſhip, as is aforeſaid; but if the "Heir bring an Action of waſte at his full age, then "he ſhall recover treble Damages, for then he can-"not loſe the wardſhip.

And *per* Stat. *Weſtm.* 2. *cap.* 14. The Prohibition of waſte upon which an Attachment did lie, is taken away, and in lieu thereof the Summons is given.

But if a man cut down Timber without licenſe, and therewith repair old Houſes, that is held no waſte; but if he therewith build new Houſes, then the cutting down of ſuch Timber is waſte alſo. *Vide Co. Lit.* 53.

The cutting down of Under-wood, or Willows, which are no Timber, ſhall not be ſaid to be waſte, but where they grow in the ſight and ſhadow of the Houſe, *Co. Lit.* 53.

There are both negligent and voluntary waſtes, and theſe are alike puniſhable, as where the Tenant or Leſſee is bound by Law to keep the Houſes in good repair, as they where when he came to them.

In this caſe if he do not ſo, but ſuffer any part of it by his negligence to grow ruinous, this is waſte, for which the Leſſor may ſue the Leſſee.

Where there is no Timber upon the Lands to make repair, yet it is waſte to ſuffer it to decay, for this, that the Tenant muſt procure Timber at his own charge, *Dy.* 226.

It's waſte where a man proſtrates, abates, or breaks down any of the Houſing, either the whole or part (that is) any of the principal Walls, or Walls of partition in Chambers, whether they be of Stone or Mud.

Where

Where by a violent Tempeſt, &c. the Houſe comes to be uncover'd, it ought to be repair'd by the Tenant in convenient time, otherwiſe it is waſte; So to ſuffer the Houſe to be burnt by negligence, &c. is waſte, *Co. Lib.* 4. 63.

If the Houſe be ruinous when the Tenant firſt comes into it, and he pull it down, and do not build it up again, this is waſte.

Where a man either takes away, pulls, or breaks down the Wainſcots, Doors, Windows, Benches, or any other things, that were inſeparable incidents of the Houſe, being ſet up and faſtned by the Leſſor or Leſſee, or other, is waſte.

What is ſaid to be waſte in Trees or Woods.

WHere there is Oak or Aſh which are held Timber in moſt Countries, (and Elm in ſome Countries where Timber is ſcarce) whether young or old, above or under twenty years of age, to fell this, or to employ it to build a new Houſe, or a new Room, or any other purpoſe than to the repair of the old Houſe, or Houſing, which are on the Land, or were at the time of the Leaſe, &c. in decay by age or tempeſt, is waſte. *Vi. Co. Lit.* 53. *Kitch.* pag. 332.

If a man fell Timber, although with an intent for reparations, and if he after ſell it, or employ it to any other uſe, this is waſte; and if after ſale he buy it again, and then employ it for reparations, yet this hath been held to be waſte. Where a man fells Timber for reparations, and ſo employs it, yet if it be done at ſuch an unſeaſonable time, as that the Trees die in the Root, this is waſte.

To cut down a Wood, and after to ſuffer Cattel to crop it when its newly felled, whereby it is killed, or to root and ſtub it up, this is waſte.

To cut down Timber-Trees for fire-boot, hedge-boot, &c. where there is enough of other boot, this is waſte.

To

To cut down such Trees for firing, as are fit for better use, being Timber, and only hollow, and dry at the top, is said to be waste. But if they be hollow, dry and dead throughout, that they bear neither fruits nor leaves in Summer, if the Tenant cut down such Trees for fire-boot, it is in no waste.

To cut down more for fire-boot, hedge-boot, and house-boot, (to keep it as he found it) than is necessary, or to cut down green wood when there is sufficient dry and dead wood, is waste.

To cut down Fruit-Trees, Apple-Trees, or Pear-Trees, is waste, if they be growing in a Garden, although for reparation.

Such Fruit-Trees, although half broken by the wind, or otherwise, if they do yet bear fruit, or the young springs of them, that they may bear fruit, if the Tenant cut them down, or pull them up, it is waste.

Where a man ears up deep Meadow, not plowed in mans memory, or grubs up wood by the roots, and turns it into arable; or on the contrary, turns arable into wood, it is waste.

To open or dig new Quarries, for coal, stone, metal, gravel, lime, clay, or the like, this, unless there be special words in the Lease to warrant it, is waste, although it be not waste for a man to dig forward in a Mine that was opened before.

It is no waste to dig the Land for gravel, clay, &c. for necessary reparations, &c.

HAving gone thus far in shewing what is waste, let the Attorney be well advised he bring not an Action of waste, where the Lease or other writing, by which the Tenant holdeth or claimeth, have not that clause in it (*without impeachment of waste*) in which case the Lessee can do no waste, &c

For the unfolding of this clause, (*without impeachment of waste*) observe, that, An

An impeachment of waſte, doth ſignifie a reſtraint from committing of waſte in Lands or Tenements, &c.

And this word (*without*) added to, Impeachment of waſte, intimates a liberty to commit waſte, and an Eſtate without any ſuch reſtraint. *Vid. Co. Lib.* 11, 82. this clauſe well expounded.

Thoſe and the like words inſerted in the Deed, *&c.* are ſaid to be annexed to the Eſtate, and they do change the quality of the Eſtate, and make the Tenant herein, in the nature of a Tenant in Tail, and it adds that priviledge thereunto, that they give the Leſſee a power and intereſt to make waſte, and to diſpoſe the things to his own uſe; And here, if the Leſſor bring an Action of waſte, the Tenant may bar him with this clauſe.

If it be not thoſe very words, or the like ſenſe, they are not good; for if the words be, without impeachment of waſte, by any Writ of waſte, the words in this caſe are more tied up, and are not ſo large, they give not ſuch a power to the Tenant, nor alter the property, they only diſcharge the Action; ſo that the Landlord can bring no Action againſt the Tenant for the waſte done.

The words (*without impeachment of waſte*) muſt be inſerted in the ſame Deed, whereby the Eſtate is made, or another Deed made at the ſame time: For if he make his Leaſe without this clauſe, and after willeth that the Leſſee ſhall hold without impeachment of waſte; it is held, thoſe words work nothing, either to diſcharge the Action, or give an intereſt.

If a man make a Leaſe for life, and by his Deed grant that if any waſte be done, it ſhall be redreſſed by Neighbours, and not by ſuit or plea; yet an Action of waſte will lie.

This

This priviledge gained by thoſe words, where it is, may be laſt; for it is annexed only to the privity of the Eſtate: And therefore if one that hath this privity annexed to his Eſtate, agree to change his Eſtate, the priviledge is gone; as where he that hath a Leaſe for years, with this clauſe in his Deed, accepts of a Deed of confirmation of his Eſtate without this clauſe.

"No perſon ſhall have an Action of Waſte, unleſs he hath the immediate ſtate of Inheritance, "but ſometime another ſhall joyn with him for "Conformity, as if a Reverſion be granted to two, "and to the Heirs of one, they two ſhall joyn in an "Action of Waſte.

The Proceſſes incident to this Action, are,

1. Summons, which is made by the Curſitor of the County, where the Houſe or Land lies.

This Summons, if againſt a Tenant in Dower, is as follows:

REX, &c. Vic. L. ſalutem, Si A. fecerit te ſecurum de clamere ſuo proſequend' tunc ſummoneas per bonos ſummonitores B. quæ fuit uxor' C. quod ſit coram Juſticiar' noſtris apud Weſtm' *Craſt.* Trin. *oſtenſura quare fecit vaſtum, venditionem, & deſtructionem de terris, domibus, boſcis, & gardinis quæ tenet in dotem de hæreditate præd' A. in N. ad exhæreditionem ipſius A. ut dicit. Et habeas ibid. ſummonitor, &c.*

Neither in this Writ, nor in a Writ of Waſte againſt a Guardian, a man ſhall not be tied to rehearſe the Statute which gives a Writ of Waſte, for that very reaſon, that they were actionable before the Statute.

"There are five ſeveral Writs of Waſte; two "at the Common Law for waſte done by Tenant "in Dower, or the Guardian, and three by ſpecial "or

"or Statute-Law for waſte done by Tenent for life, "for years, and Tenant by the Courteſie.

If the Writ be againſt Tenant for term of life, or of years, then it goes in this form:

REX, &c. Vic. L. ſalutem, Si A. fecerit, &c. tunc ſummoneas, &c. B. quod ſit coram, &c. oſtenſurus quare de communi concilio Regni noſtri Angl. proviſum ſit, quod non licet alicui vaſtum, venditionem ſeu deſtructionem facere de terris, boſcis & gardinis. Præd. B. de terris, domibus & gardinis, M. N.

This Writ being returnable on the day of three weeks after St. *Michael*, the Defendent may, if he pleaſe, eſſoyn upon that Return; which if he do, then the Plaintiff may adjourn it unto the morrow after St *Martin*; which if ſo, then the next proceſs is a *Pone*, which is to be made by the Philizer of the County, and may be made returnable in 8 days of St. *Hillary*.

Upon the return of this *Pone*, and filing it with the Philizer, he maketh out a *Diſtringas*, which you may have returnable in 8 days of the Purification of the bleſſed Virgin *Mary*, as we ſhew'd before in the caſe of Partition, *&c.* Upon the *Diſtringas* if the Tenant doth not appear, you have Judgment by the Statute *W.* 2 *cap.* 14. And as I told you before in other Actions, in caſe the Defendent eſſoyn not upon the Summons, he may upon the *Pone*.

Note, if the Leſſee appear upon the Diſtreſs, and plead, and after make default, the Plaintiff ſhall not by the Statute *W.* 2 *cap.* 14. have a Writ to enquire of the Waſte, becauſe it is out of the words and purview of the Act.

In caſe the Defendent appear, and that you declare, your form is as follows, in caſe it be againſt Tenant for years.

Waſte.

TRin. 10. Car. *primi Regis Rotulo* 2444. *Ebor. ſſ.* Willielmus M. *Generoſus ſum. fuit ad reſpondend.* Johanni B. *Armigero quare cum de communi Conſilio Regni Dom. Regis Angliæ proviſ. ſit quod non liceat alicui vaſtum, venditionem ſeu deſtructionem facere de terris, domibus, boſcis, ſeu gardinis ſibi dimiſſis ad terminum vitæ vel annorum idem W. fec. vaſtum, venditionem & deſtructionem ad exhæredat. ipſius* Johannis, *& contra formam proviſionis præd. &c. Et unde idem* Johannes *per* R. C. *Attornat. ſuum dic. quod cum ipſe viceſimo octavo die* Maij *Anno Regni Dom. Regis nunc quint. apud R. dimiſiſſet præfat.* Willielmo *unum meſ. unum clauſum paſturæ, le* W. *Leaſe, alias* W. *Leaſe continen. per æſtimationem centum & triginta acras, unum alium clauſum paſturæ cum pertin voc. le &c. continen. per æſtimationem viginti & duas acras, & unum alium clauſum paſturæ voc. &c. continen. per æſtimationem* 17 *acras cum pertin. in* R. *præd. habend. & occupand. ſibi & aſſignatis ſuis a Feſto annunt, beatæ Mar. Virginis tunc ult. præterit. uſque finem & terminum trium annor. ex tunc prox. ſequen. plenar. complend. & finiend. virtute cujus dimiſſionis præd.* Willielmus *in tenementa præd. cum pertin. intravit & inde fuit poſſeſſionat. ipſoque* Willielmo *ſic inde poſſeſſionat. exiſten. revertione inde eidem* Johanni *& hæredibus ſuis ſpectan. præd.* Willielmus *fecit vaſtum, venditionem & deſtructionem de domibus videlicet permittend. unam* aulam *pretii* 10 *l. & unam Cameram pret.* 10 *l. parcel. meſſuagii prædicti ſuperius dimiſ. ſtare & eſſe diſcoopert. per quod groſſum maremium earundem Aulæ & Cameræ per tempeſtates pluviales ſuper ill. diſcend. putrid. deven. & corrupt. & aula & Camera ill. ratione corruptionis illius ruinæ minant: de boſcis videl. in ſuccidendo in quodam clauſo vocat. Belbridge Spring, continen. per æſtimationem ſex acras exiſten. parcel. præd. clauſi voc. le W. L. alias*

W. L.

W. L. parcel. tenementorum prædictorum ſuperius dimiſſor. cent. ſerrapinos pretii cujuſlibet earum quadraginta ſolidorum & centum quercus pretii cujuſlibet earum triginta ſolidor' in eiſdem ſex acris ſparſim nuper creſcen. & Maremium inde capiend. & vendend. decapitando etiam cent. quercus retii cujuſlibet earum viginti ſolidorum in prædictis ſex acris ſparſim nuper creſcen. & lignum inde proveniend. capiend. & vendend. de terris etiam videl. in fodiendo in prædicto clauſo voc. Belbridge Spring *ducent. carectat. lapidum vocat.* Slate-ſtones, *pretii cujuſlibet carectat. inde* 5 s. *& lapides præd. capiend' & vendend' de gardinis etiam permittend' duodecim perticat. muri, Anglice* a Mud-wall, *cum Maremio veteri Stamine coopert. pretii cujuſlibet perticat. inde viginti ſolidorum, gardin' parcel' tenementorum prædict' cum pertin. nuper includen' fore proſtrat' ad exheredation' ipſius* Johannis *& contra formam proviſionis prædict', &c. unde die, &c. damn.* 1x *l. Et inde produc' ſectam, &c.*

Et prædictus M. per J. H. Attornat' ſuum ven. & defend' vim & injur. quando, &c. Et quicquid, &c. Et dicit quod ipſe null' fecit vaſtum, venditionem ſeu deſtructionem in tenementis prædictis cum pertin' prout præd' J. per breve & narrationem ſuam prædict. ſuperius ſupponit. Et de hoc pon. ſe ſuper patriam & prædict. J. ſimil. Ideo præcept. eſt vic. quod venire fac. hic in Octabis Pur. 12. *&c.*

In caſe the Tenant for life hath let the ſame to a Tenant for years, then the Tenant for years may pray to defend the Action as followeth:

ſt. xv. *Paſchæ.* ET modo ad hunc diem ven' tam præd' *W. B.* per Attorn' ſuum prædict. quam quidam *W. H.* gen. modo tenens tenementorum præd. cum pertin. ad terminum diverſor' annorum adhuc ventur. pro *Rog' Smith* Attorn. ſuum. Et dic' quod ante diem impetrat. brevis origin. præd. *W. B.* & ante aliquod vaſtum, vendition' ſeu deſtructionem

ctionem ſuperius fieri ſuppoſit. præd. Urſula M. vid. fuit ſeiſit' de tenementis præd.. cum pertin. in dominico ſuo, ut de libero tenemento pro termino vitæ ſuæ. Et ſic inde ſeiſita exiſtens ante vaſtum præd. ſuperius fieri ſuppoſit. ſcil. viceſimo primo die Februar. Anno Regn. Dom. Regis nunc tertio apud G. præd. per quandam Indentur. ſuam inter eand. Urſulam ex una parte & ipſum Walterum ex altera parte factam, cujus alteram partem, ſigillo præd. Urſulæ ſignat. idem Walterus hic in Cur. profert. cujus dat. eſt eiſdem die & anno, dimiſiſſet eidem Waltero tenementa præd. cum pertin. Habend. & occupand. ſibi & aſſign. ſuis a Feſto Annunciationis beatæ Mariæ Virginis tunc prox. ſequend. uſque finem & terminum trium annorum extunc prox. ſequend. & plenarie complend. ſi prædicta Urſula tamdiu viveret. Et ſi præd. Walterus Hill. Executores, Adminiſtrator. vel Aſſign. ſui vel eorum aliquis propoſit. vel determinat. forent ad habend. tenend. & gaudend. prædict. tenementa cum pertin. pro aliquo longiore tempore vel termino annorum quam pro prædict. termino trium annorum & ad aliquod tempus ante Feſtum Sanct. Michaelis Archangeli qui tunc foret. in anno Domini milleſimo ſexenteſimo triceſimo ſecundum computation. Eccleſiæ Anglicanæ darent ſive relinquerent notitiam in ſcriptis de ejus ſeu eorum propoſito intentione ſive determinatione ad vel in tunc domum mantional. E.H. mil. ſcituat. & exiſten. in M. in Comitat. C. tunc habend. & tenend. prædicta tenementa cum pertinentibus præfato W. H. Executor. Adminiſtrator. & Aſſign. ſuis immediate ab & poſt expirat. præd. termini trium annor. ſuperius mentionat. uſque finem, et termin. ſexaginta annorum ex tunc prox. ſequen. plenar. complend. et finiend. ſi præd. Urſul. tam diu viveret. Virtute cujus dimiſſionis idem Walterus in craſtino præd.

Feſti

Feſti Anunciationis beatæ Mariæ prox. poſt confectionem indentur. præd. in tenementa præd. cum pertin. intravit & fuit inde poſſeſſionat. pro præd. termin. trium annor. in eadem Indentura ſuperius mentionat. Ipſoque Waltero ſic inde poſſeſſionat. idem Walterus poſtea & ante præd. Feſtum Sanct. Mich. Arch. qui fuit in anno Dom. milleſimo ſexcenteſimo triceſimo ſupradicto ſcil. xxviij. die Septemb. anno Dom. milleſimo ſexcenteſimo triceſimo ſupradicto apud M. præd. apud præ. domum mantionalem præd. E. H. Militis ibidem dedit & reliquit notitiam in ſcriptis quod ipſe propoſit. & determinat, fuit ad habend. tenend. & gaudend. prædict. tenementa cum pertin. pro longiore tempore & termino annorum, quam pro prædicto termino trium annorum in Indentur. præd. ſuperius mentionat. ſecundum formam & effect. Indentur. illius P. quod idem Walterus fuit de præd. intereſſe præd termini ſexaginta annorum incipiend. poſt finem & determinat. præd. termin. trium annorum poſſeſſionat. Ipſoque Waltero ſic inde poſſeſſionat. exiſten. præd. terminis trium annorum poſtea ſcil. ad Feſt. Annunciat. beatæ Mariæ Virginis anno Regni Dom. Regis nunc ſexto finivit & determinavit per quod idem Walt. fuit & adhuc eſt de tenement. præd. cum pert. pro præd. termino ſexaginta annorum ſi præd. Urſula tam diu vixit poſſeſſionat. Et idem Walt. dic. quod præd breve de vaſto præd. in forma præd. impetrat. habit. & impetrat. fuit per fraudem & covinam inter præd. Urſul. & præfat. *W. B.* inter eos apud *G.* præd. prius habit. & ſeparales defalt. præd. ſuper ſeparal. diebus præd. in forma præd. per præd. Urſul. voluntar. fact. fuer. ad decipiend. eund. Walt. H. de termino annorum præd. de & in tenementis præd. adhuc ventur. Et idem Walt. petit quod ipſe pro defalt. prædictæ Urſulæ in forma præd. fact. recipietur & admittat. ad defen-

ctionem ſuperius fieri ſuppoſit. præd. Urſula M. vid. fuit ſeiſit' de tenementis præd.. cum pertin. in dominico ſuo, ut de libero tenemento pro termino vitæ ſuæ. Et ſic inde ſeiſita exiſtens ante vaſtum præd. ſuperius fieri ſuppoſit. ſcil. viceſimo primo die Februar. Anno Regn. Dom. Regis nunc tertio apud G. præd. per quandam Indentur. ſuam inter eand. Urſulam ex una parte & ipſum Walterum ex altera parte factam, cujus alteram partem, ſigillo præd. Urſulæ ſignat. idem Walterus hic in Cur. profert. cujus dat. eſt eiſdem die & anno, dimiſiſſet eidem Waltero tenementa præd. cum pertin. Habend. & occupand. ſibi & aſſign. ſuis a Feſto Annunciationis beatæ Mariæ Virginis tunc prox. ſequend. uſque finem & terminum trium annorum extunc prox. ſequend. & plenarie complend. ſi prædicta Urſula tamdiu viveret. Et ſi præd. Walterus Hill. Executores, Adminiſtrator. vel Aſſign. ſui vel eorum aliquis propoſit. vel determinat. forent ad habend. tenend. & gaudend. prædict. tenementa cum pertin. pro aliquo longiore tempore vel termino annorum quam pro prædict. termino trium annorum & ad aliquod tempus ante Feſtum Sanct. Michaelis Archangeli qui tunc foret. in anno Domini milleſimo ſexcenteſimo triceſimo ſecundum computation. Eccleſiæ Anglicanæ darent ſive relinquerent notitiam in ſcriptis de ejus ſeu eorum propoſito intentione ſive determinatione ad vel in tunc domum mantional. E.H. mil. ſcituat. & exiſten. in M. in Comitat. C. tunc habend. & tenend. prædicta tenementa cum pertinentibus præfato W. H. Executor. Adminiſtrator. & Aſſign. ſuis immediate ab & poſt expirat. præd. termini trium annor. ſuperius mentionat. uſque finem, et termin. ſexaginta annorum ex tunc prox. ſequen. plenar. complend. et finiend. ſi præd. Urſul. tam diu viveret. Virtute cujus dimiſſionis idem Walterus in craſtino præd.

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ſionem juris ſui & termin. ſui annorum præd. de & in tenementis prædictis adhuc ventur. Eo quod ead. tenement. ſunt jus ſuum pro præd. termino lx. annor. ſi præd. Urſul. tamdiu vixit, et pro eo quod idem Walt. ven. ante Jud. in præd. placito reddit. parat. præſat. *W. B.* in loquela præd. reſpondere et jus ſuum præd. pro prædict. termino lx. annor. ſi præd. Urſula tamdiu vixit defendere, *&c.* Et admittitur, *&c.* ſuper quo præd. *W. B.* narrando, *&c.*

Thus you have a Declaration in Waſte, and a Plea pleaded to it, and Iſſue joyned, and this is againſt Tenant for term of years: now the Declarations in this Action vary, as to the ſeveral perſons that bring the Action, and the ſeveral perſons againſt whom it is brought.

As where it is brought by the Heir in tail, againſt Tenant for life.

Where it is againſt Tenant in Dower, as before you ſaw in the Summons.

Alſo where the Purchaſer of the Reverſion brings it againſt Tenant for years.

Alſo it may be brought after a Fine levied, in all which caſes, the Declaration muſt vary, according to the Cauſe, in all which caſes, as alſo in divers other proceedings of other natures, I refer you to a Book printed, entituled, *Declarations and Pleadings in Engliſh*, collected by *Richard Brownlow* Eſquire, which would ſwell this ſmall Tract beyond its intended bigneſs.

Now, as the Declarations are various, ſo are the Pleas incident to them; for they may be either general or ſpecial.

The general Plea is, no waſte made, *&c.*

The ſpecial Pleas are many, either in way of Juſtification, or Excuſe, as the caſe is.

It is a good Plea, if the Waſte be laid, to be in not

not repairing, &c. That it was repaired before the Action brought, and this must be pleaded specially.

But to plead it was repaired after the Action brought, it is no good Plea.

It is a good Plea to any Waste, that the Lessor gave authority to do it.

It is no good Plea to say, that the Plaintiff did covenant to deliver timber from off the Land, to do it, and refused, for the Defendent in this case may not take it.

It is a good Plea to say, The House or Trees were burnt or spoiled by fire, water, or wind, or that the ruine of them was caused by some extraordinary act of God.

It is a good Plea to say, That the House fell before the Lease; or that it was so extraordinary ruinous, and the Timber so rotten, as that it would not bear repairing.

It is a good Plea to say, That the Lease is surrendred to the Lessor, and he hath accepted it.

It is a good Plea, that the Plaintiff hath entred upon the Land, and before such his entry there was no Waste committed.

It is a good Plea, to plead that the Plaintiff hath granted away his Estate, and before the grant there was no waste committed.

If the Plaintiff by good words do effectually release the waste, this is a good Plea.

Where the Lease was made without impeachment of waste, it is a good Plea on the part of the Defendent.

It is no good Plea in this Action for cutting down Timber, or pulling down the House, that the Lessor took away the Timber or materials, &c.

It is no Plea, that the lessor hath a Covenant from the Lessee, not to do waste.

It is no good Plea for the Tenant in an Action of waſte for cutting of Timber, to ſay, that he cut it, and keeps it till there ſhall be need; nor to ſay, he cut it generally for neceſſary reparations, unleſs he ſay withal, that he employed it to that purpoſe.

And yet it were but reaſon, it ſhould be juſtified to cut it a little before it be uſed, for the drying of it, and making of it otherwiſe uſeful, when an occaſion of uſe is apparent at hand.

It is a good Plea for the Defendent to ſay, that he cut it to make Poſts for Incloſures, if he can withal preſcribe that there have been always ſuch Incloſures there.

Upon theſe, or any other Iſſue joyned, and that you intend to go to Tryal, the directions that were given before in Partition, Dower, *&c.* will guide you, both for the making your *Venire facias*, *Habeas corpora*, and Record; and likewiſe for your Tryal, and Return of your *Poſtea*, and entring of Judgment, there muſt be a clauſe for the Jury to view the place waſted.

In this Action, as before you have heard, your Judgment is, that the Plaintiff ſhall recover the place waſted, and his treble damages.

In caſe the Defendent pleads not, but lets it go by default, or confeſſeth the Action, when a Writ of enquiry is awarded, and upon that the Sheriff is to enquire by the Oath of twelve Jurors, what damages the Plaintiff hath ſuſtained, which he returns in an inquiſition, and then the Party hath Judgment to recover the treble of it; and then hath he as in a Verdict after Judgment entred, a Writ of Seiſin awarded, which is directed to the Sheriff of the County, where the Houſe or Land lyes, to give poſſeſſion to the Plaintiff of the Place or places waſted, *&c.*

War-

Warrantia Chartæ *comes next to be treated of.*

THis Writ lyes where one is enfeoffed of Lands with warranty, or where one releaſeth to a man in poſſeſſion, or confirmeth to one in poſſeſſion with warranty, and then he is impleaded, or fears to be impleaded, *Vid.* N. B. 156.

Where *Dedi* is contained in a Deed, (though there be no expreſs warranty) the Feoffee is bound to warranty during his life, but at this day upon one giſt in tail by the word *Dedi*, the Donor and his Heirs are bound to warranty; and ſo it is of a Leaſe for Life, reſerving a Rent, though it be *Sans fait*, 2 Inſt. 275.

The Proceſs in this Action are Summons in the firſt place, which is as follows:

The Summons in Warrantia Chartæ.

REX, &c. Præcipe T. L. militi quod juſte, &c. Warrantizet T. B. unum meſſuagium, triginta Acras Prati & viginti acras Paſturæ cum pertin. in L. quas tenet & de eo tenere clamat & unde Chartam ſuam habet ut dicit. Et niſi fecerit & præd. T. B. fecerit te ſecur, de clamore ſuo proſequend. tunc ſummon. per bonos ſummonit. præd. T. C. quod ſit coram Juſticiariis noſtris apud Weſtm. in Craſt animarum oſtenſur. quare non fecerit. Et habeas ibi ſumm. & hoc breve T. &c.

Warrantia Chartæ is either proviſional or remedial for damage ſuſtained, or *quia timet.*

The Proceſs is a Summons, Attachment, and Diſtreſs infinite before appearance, and if he appear, and after make default, a grand Diſtreſs doth iſſue in lieu of a *Petit Cape.*

And although this Writ ſuppoſeth that he holdeth the Defendent; yet it is not material whether he holdeth of him, or no.

And alſo if the Plaintiff hold by Homage *Anceſtrel* of the Defendent any Land, and is impleaded, and hath not any Deed of it, yet he ſhall have this Writ

of

of *Warrantia Chartæ* againſt the Defendent, and the Writ will ſay, (*whereof he hath his Deed*) and yet he hath not the deed to ſhew, but only holdeth by *Homage Anceſtrel*, which implyes a warranty, and for this in this caſe, theſe words (*whereof he hath his Deed*) is not material.

If a man leaſe Land for term of life, rendring a certain Rent, or make a Gift in tail, rendring Rent without Deed, and after the Leſſee or Donee is impleaded in ſuch Action where he cannot vouch, then he ſhall have this Writ of *Warrantia Chartæ*, againſt the Leſſor, or Donor, or his Heir, who hath the Reverſion; for this Reverſion and Rent reſerved, makes a warranty in Law, by the Statute of *Bigamis* the laſt Chapter, although he had not any Deed of it, 2 *Inſt.* 275.

For all the parts of a Warrantia Chartæ, ſee Osborns *Caſe in* Hobbart.

If a man give Land to another in Fee, by Deed, by theſe words, (*I have given and granted*, &c.) In this caſe, he ſhall be held to warranty of this Land, to the Feoffee by theſe words, and if the Feoffee be impleaded he ſhall have a Writ of *Warrantia Chartæ* againſt the Feoffor by theſe words, (*I have given and granted*, &c.) but not againſt his Heir; for the Heir ſhall not be bound unto warranty by the Deed of his Father, unleſs he oblige himſelf and his Heirs to warranty, &c. by expreſs words in the Deed, as to ſay, *I and my Heirs all the aforeſaid Lands will warrant*, 2 Inſt. &c. 275.

Note, that he ſhall not have this Action of *Warrantia Chartæ* againſt the Feoffors, or againſt him againſt whom he hath warranty, if he be impleaded in any Action wherein he may vouch him, for then he ought to vouch him to warranty, and if he will not vouch him in the Action, he ſhall not afterwards have a Writ of *Warrantia Chartæ*. Note,

Note, that the Vouchee is either to defend the right againſt the Defendent, or to yield him other Lands, *&c.* in value, and extendeth to lands, *&c.* of an Eſtate of Free-hold or inheritance, and not to any Chattel, real, perſonal, or mixt, ſaving, only in caſe of a Wardſhip granted with warranty; for in the other caſes, concerning Chattels, *&c.* the Voucher ſhall have an action of Covenant, if he hath a Deed: And an Action of the Caſe, or an Action of Deceipt, if it be by word of Mouth.

The Proceſs whereby the Vouchee is called, is a Summons *Ad Warrantizandum*, & whereupon, if the Sheriff return that the Vouchee is ſummoned, & he maketh default, then there is awarded a *Magnam cape ad valentiam*, &c. When, if he make default again, then Judgment is given againſt the Tenant, and he to have over in value againſt the Vouchee; but if the Sheriff return that he hath nothing, then after a Writ of *Alias* and *Plures*, a Writ of *Sequatur ſub periculo ſuo* is awarded, *&c.* And in ſuch caſe, the Demandant ſhall not have Judgment to recover in value, *&c.* becauſe the Vouchee was never warned.

This is intended of a Voucher in any real Action.

Vid. Co. Lit. 101. *b. This caſe at large.*

In the Caſe of Homage *Anceſtrel*, which is a ſpecial warranty in Law, the Lands that the Lord hath generally at the time of the Voucher, ſhall be lyable to Execution in value, where he hath them by deſcent or purchaſe; but in the caſe of an expreſs warranty, the Heir ſhall be charged but only for ſuch lands as he had by deſcent from the Anceſtor, which creates the Warranty.

Note, the Lands of the Vouchee ſhall be lyable to warranty, that the Vouchee hath at the time of

of the Voucher, for that the Voucher is in lieu of an Action, and in *Warrantia Chartæ* the Land which the Defendent hath at the time of the writ brought, ſhall be lyable to the warranty.

If a man give Lands in Fee with warranty, and binds certain Lands eſpecial to warranty, the perſon of the Feoffor is hereby bound, and not the Land, unleſs he had it at the time of the Voucher.

A man may bring his writ of warranty of Charters, *&c.* in what County he will, if the Deed bear not date at a certain place of the County, for then he ought to bring the Writ where the Deed bears date.

But if a man bring a writ of *Warrantia Chartæ*, by reaſon of Homage *Anceſtrel*, &c. then he ought to bring the writ in the County where the Land lyes.

The Summons in this writ we have ſhewed you before, upon which writ, as in the caſe of waſte, the Defendent may eſſoyn, and the Plaintiff adjourn; and for want of an adjournment of the Plaintiff, the Defendent may enter a *Non ſuit* againſt the Plaintiff, provided there were a *Ne recipiatur* firſt entred with the Clerk of the Eſſoyns, upon the day of Exception; and then in that caſe the Plaintiff is put to begin again.

After the Summons comes the *Pone*, and then a *Diſtringas*, and if the Defendent appear not, an *Alias Diſtringas* ſetting Iſſues, *&c.* and ſo Diſtreſſes *in infinitum*, till there be appearance given.

In caſe the Defendent do appear, then you may declare as in the form following.

The Declaration in *Warrantia Chartæ*.

Lincoln ſſ.

T. L. Mil. ſumm. fuit ad reſpondend. T. B. de placito quod warrantizet ei unum meſſuagium & triginta acr. prati cum pertin. in L. quas tenet & de eo tenere clamat,

clamat, & unde chartam ſuam habet, &c. Et unde idem T. B. per W. S. Attornat. ſuum dic. quod cum prædict. T. L. fuiſſet ſeiſit. de tenementis prædictis cum pertin. in Dominico ſuo ut de feodo, & ſic inde ſeiſit exiſten. Nono die Octobris anno Regni Dom. Regis nunc XXj. apud L. per quandam chartam ſuam, quam idem T. B. ſigillo prædicti T. L. ſignat. hic in Cur. profert, cujus dat. eſt eodem die & anno, dediſſet & conceſſiſſet eiſdem T. B. hæred. & aſſignat. ſuis tenementa præd. cum pertin. habend. & tenend. tenementa præd. cum pertin. eiſdem T. B. & hæred. ſuis in perpetuum. Et per eandem chartam prædictus T. L. obligaſſet ſe & hæredes ſuos ad Warrantizand. tenementa præd. cum pertinent. eidem T. B. & hæred. ſuis contra ipſum T. L. & hæredes ſuos & contra omnes alias perſonas claman. per vel ſubter ipſum vel ipſos vel per aut ſubter T. L. Militem tunc defunct. patrem præd. T. L. modo defend. & dominam Mariam L. tunc ſimiliter defunct. matrem prædict. T. L. modo defend. prout per eand. Chartam plenius apparet. Quorum quidem doni et conceſſionis prætextu idem T. B. fuit ſeiſit. de tenementis prædict. cum pertin. in dominico ſuo ut de feodo, ipſoque T. B. ſic inde ſeiſit. exiſten. quidam F. F. gen. clamans per et ſubt. prædictum T. L. modo defend. arianavit verſus ipſum T. B. quandam aſſiſam novæ diſſeiſinæ de tenementis prædictis cum pertin. coram O. B. Milit. et Baronet. un. Juſtic. dict. Domin. Regis de Banco hic et R. B. Milit. altero Juſtic. ejuſdem Dom. Regis ad Aſſiſas in com. prædict. capiend. aſſignat. qua quidem aſſiſa pendend. idem T. B. requiſivit præfat. T. L. quod ipſa prædicta tenementa cum pertinen. eidem T. B. Warrantizaret ſed prædict. T. L. prædict. tenementa cum pertinentibus eidem T. B. hucuſque Warrantizare contradixit et adhuc contradicit, unde dicit, quod deteriorat. eſt et damn. habet ad valentiam quingentar. librarum, et inde producit ſectam.

Et prædictus T. L. modo defend. per W. W. Attorn. ſuum

ſuum ven. & defend. vim. & injur. quando, &c. Et dicit quod ipſe non poteſt dedicere quin charta prædicta ſit factum ipſius T. L. modo defend. nec quin ipſe per Chartam illam dederit & conceſſerit tenementa prædict. cum pertinent. eidem T. B. in forma qua idem T. B. ſuperius verſus eum narravit. Ideo conſider. eſt quod prad. T. L. Warr. præfato T. B. Tenementa prædicta cum pertinen. pro loco & tempore, &c. & nihil de miſ. verſ. prædict. T. L. quia ven. primo die per ſumm. &c.

Here you have a Declaration and a Judgment by confeſſion.

Note, if a man recover his warranty in *Warrantia Chartæ*, and after he is impleaded in an Action in which he cannot vouch, as by Aſſiſe, or by *Scire facias* upon a Fine, now it ſeems that he ought to give notice to him againſt whom he had recovered his warranty of his Action; and to pray him to ſhew what Plea he will plead to defend the land.

Note, that a man may bring a writ of *Warrantia Chartæ* at the Common Law for warranty made of lands holden in Ancient Demeſne.

Concerning *Audita Querela.*

What the Writ is.

Audita Querela is a Writ, and lyeth where one is bound in a Statute Merchant, Statute Staple, or Recognizance, or where Judgment is given againſt him for Debt, and his body in Execution thereupon, then if he have a Releaſe, or other matter ſufficient to be diſcharged of Execution, and hath no day in Court there to plead it, then he ſhall have this writ that hath ſo recovered, or againſt his Executors.

Againſt whom, and for whom this Writ is brought.

This Writ lyeth for the Party himſelf, againſt whom the Judgment is had, by whom the Statute

tute is made, or his Heir, Executor, or Adminiſtrator, upon whom the charge is come, or coming. Sometimes it is to be had againſt the Proſecutor himſelf, and ſometimes againſt him and others that ought to bear a part of the burthen with him.

It lyes againſt a Terr-Tenant, without naming him Party or Privy.

Whereſoever this remedy is given, there muſt be theſe three things in the caſe.

1. There muſt be a charge or burthen come, or coming upon him that is to have it.

2. It muſt be ſuch a charge, *&c.* as by law he ought to be diſcharged of, in part or in whole.

3. It is ſuch a caſe as where he hath no other remedy for his relief.

Theſe following Caſes will clear theſe particulars.

If a Judgment or Judgments and Execution be had againſt one, and the Plaintiff releaſe him of the Debt in fact, or that he be releaſed of it all, or of part of it in Law, and yet he ſueth out Execution.

If a Judgment be had againſt me and another, and one of us be taken in Execution, and after are releaſed of the Debt, or diſcharged of the Execution by the Party himſelf, the other may take advantage of this.

" If a Judgment be had againſt one, and he have a " Releaſe of all Actions perſonal, he ſhall have this " becauſe he is to diſcharge himſelf of a perſonal Ex- " ecution.

If Judgment be againſt two Treſpaſſors, and one taken, and the damages ſatisfied by him.

The like caſe if a Judgment be againſt two or more, upon one Bond, and Execution is done upon, and ſatisfaction made by one of them.

If

ſuum ven. & defend. vim. & injur. quando, &c. Et dicit quod ipſe non poteſt dedicere quin charta prædicta ſit factum ipſius T. L. modo defend. nec quin ipſe per Chartam illam dederit & conceſſerit tenementa prædict. cum pertinent. eidem T. B. in forma qua idem T. B. ſuperius verſus eum narravit. Ideo conſider. eſt quod præd. T. L. Warr. præfato T. B. Tenementa prædicta cum pertinen. pro loco & tempore, &c. & nihil de miſ. verſ. prædict. T. L. quia ven. primo die per ſumm. &c.

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Wheresoever this remedy is given, there must be these three things in the case.

1. There must be a charge or burthen come, or coming upon him that is to have it.

2. It must be such a charge, *&c.* as by law he ought to be discharged of, in part or in whole.

3. It is such a case as where he hath no other remedy for his relief.

These following Cases will clear these particulars.

If a Judgment or Judgments and Execution be had against one, and the Plaintiff release him of the Debt in fact, or that he be released of it all, or of part of it in Law, and yet he sueth out Execution.

If a Judgment be had against me and another, and one of us be taken in Execution, and after are released of the Debt, or discharged of the Execution by the Party himself, the other may take advantage of this.

"If a Judgment be had against one, and he have a "Release of all Actions personal, he shall have this "because he is to discharge himself of a personal Ex-"ecution.

If Judgment be against two Trespassors, and one taken, and the damages satisfied by him.

The like case if a Judgment be against two or more, upon one Bond, and Execution is done upon, and satisfaction made by one of them.

If

If Executors ſue for, and recover a Debt, and after the Teſtament is revoked, in this caſe the Party that hath paid the Money, may get the ſame certified by the Biſhop, and then he ſhall have his remedy againſt the Executors.

If the Conuſor after Execution tender the Money due upon the Statute to the Conuſee, and he refuſe it, or if part of it were paid at the day, and he tender the reſt in Court, and yet the Conuſee go on to extend, in theſe caſes, the party grieved may have this remedy.

If the Statute were delivered to a ſtranger to keep till certain conditions were performed, and he doth deliver it to the Conuſee; or he doth get it by fraud from him, before the conditions be performed, in this caſe he ſhall be relieved by this Writ.

If an Infant enter into a Statute, he may avoid it whilſt he is in his minority, by this Writ, and the courſe is this: In caſe he be in Priſon, this Writ may be ſued out by ſome of his Friends, from the Juſtices, who thereupon command the Sheriff to bring the Infant into Court to be ſeen; and if the Judges judge him to be within age, after proceſs ſent to the Conuſee, they will diſcharge him. But if one that hath been an Infant, be ſued upon it, after he is of full age, this Writ doth not lye for him.

If divers be bound by one ſpecialty [*Conjunctim & Diviſim*] and the Obligee get Judgment and Execution againſt one of them, and after ſue the eſpecialty againſt the other, he ſhall not have this writ for his relief, but may plead the former Execution.

If in the Interim betwixt Verdict and Judgment, the Parties have put themſelves unto Arbitrement for the ſuit, or the Defendent get a Releaſe from the Plaintiff, and yet the Plaintiff doth Proceed, the Defendent may have this Writ; but where theſe

caſes

caſes are put, its to be conceived before the Writ brought, that Judgment is given.

Where a man ſues for a thing for which he had formerly Judgment and Execution, there this Writ lies not, for it is pleadable.

Where a man and his Heirs are bound by any Bond or Bill, *&c.* and the Obligee ſue it, and recover againſt the Heir, and after ſue the Executors for the ſame cauſe; or on the other ſide after Recovery had againſt the Executors, he ſue the Heir, here the Heir or Executor ſo ſued may have this remedy, for that he cannot plead it in bar.

Where a Leſſee covenants for him and his Aſſigns to repair Houſes, or to do any other thing chargeable upon him after aſſignment of his Eſtate, and he aſſign his Eſtate, and after the Leſſor, who may ſue either of them, ſue and recover againſt one of them; in this caſe, if after he ſue the other for the ſame cauſe, he may have this remedy.

The Proceedings in this Action are as follow.

WHere before Execution this Writ is brought by the Party grieved himſelf, or by his Heirs, or Executors, he furniſing good cauſe of this Writ, muſt give good Bail to proſecute, and ſtand to the Judgment of the Court, upon which he may have a *Superſedeas* to ſtay Execution; but when the Party is in priſon, then it ſeems there is no Bail put in, till the Conuſee or Obligee anſwer in the *Audita Querela.*

Note, the Proceſs before Execution, are *Venire facias*, *Diſtringas*, and if he come not to appear upon the *Diſtringas*, unleſs the Sheriff return a *Nihil habet* upon the *Venire*, then ſhall iſſue a *Diſtringas Alias*, and *Plures*, and upon a *Nihil* returned on theſe Proceſs, then a *Capias* ſhall iſſue.

Note, that after Execution executed, no *Superſedeas* doth lye, after Execution a *Scire facias* doth iſſue, and this peremptory.

The Proceſs before Execution are a *Venire facias* and an *Alias*, &c. and then if he comes not in, the uſe hath been, that upon motion, the party in priſon may be diſcharged.

After thoſe Proceſs, a *Diſtringas*; and upon default after appearance, and a Plea pleaded, a *Diſtringas ad audiendum judicium*; for by ſuch default, Judgment ſhall be given againſt him, and after Execution, the Proceſs is a *Scire facias*, when the Party is in priſon upon a *Capias ad ſatisfaciendum*.

Where a man puts in Bail in this Action, he ſhall not be diſcharged of this Bail, but muſt continue till the Suit by *Audita Querela* be determined; for albeit the Party do not proſecute after the appearance of the Defendent, yet he muſt continue in priſon, or ſtand upon his Bail.

If a man be Non-ſuited in one *Audita Querela*, yet he may have another; but he ſhall have no *Superſedeas* in the ſecond, as he had in the firſt.

Audita Querela *upon the Statute of Uſury.*

REX Juſtic. ſuis de Banco ſalutem. Ex gravi Querela J. accepimus, quod cum idem J. nuper coram J. tunc majore Villa Briſtol & J. tunc Clerico ad recognitiones debitorum apud B. accipiend. Deputatis recognoviſſet ſe debere A. 100 l. *ad certos terminos in recognitione prad. contentos ſolvend. ac idem A. poſtmodo per quandam Indenturam inter ipſos A. & L. confectam conceſſiſſet quod ſi præfat. A. ſingulis annis ad quatuor anni terminos per æquales portiones quendam redditum* lx. s. *exeunt. de terris & tenementis prædict. J. aut R. de K. fratris ejuſdem J. in Villa & ſuburbio Briſtol ad totam*

vitam

vitam ipſius A. extunc dicta recogn. de 100 *l. penitus ceſſaretur & pro nulla haberetur prout per alteram partem Indentur. præd. ſigillo præd. A. ſigillat. quam idem J. penes ſe habet ut aſſerit plenius poterit apparere, & licet præd. J. dict. reddit* lx. s. *præfat' a ſingulis annis ad terminos prædictos æquis portionibus a tempore confectionis recogn. præd. uſque ad Feſtum Paſchæ & termino &c. bene & fidelit. ſolv. & eundem reddit. eidem A. ſemper hactenus a Feſto præd. ad eoſd. terminos ſolvere paratus fuerit & adhuc exiſtit prout idem J. viis & modis quibus convenit paratus eſt edocere: idem tamen A. Executor. dict. C. l. de terris & tenement. ipſius J. prætextu recogn. præd. proſequitur minus juſte in ipſius J. diſpendium non modicum & gravamen & contra vim & effectum Indentur. ſupradict. ſuper quo &c. Et quia eidem J. injuriari nolumus in hac parte, vobis mandamus quod viſa altera parte Indentur. prædict. & vocat. coram vobis partibus prædictis auditiſque hinc inde earum rationibus ulterius in hac parte fieri fac. quod de jure & ſecundum legem & conſuetudinem Regni noſtri Angliæ fuit faciend' T. &c.*

Rex Juſtic. de Banco ſalutem. Ex parte J. de B. nobis eſt graviter conquerendo monſtratum, quod cum ipſe coram Adam de Bury nuper Majore Civitat. noſtr. London & Will. de Merſton, Clerico ad recognition. debitor. in eadem Civitat. accipiend. deputatis recognoviſſet ſe debere R. de K. ducentas marcas quas ei ſolviſſe debuiſſet ad certum terminum in recognit. præd. contentum. Et licet prædictus R. per ſcriptum ſuum omnimod. actiones reales & perſonales quas erga præd. J. ratione cujuſcunque tranſgreſſionis, computi ſeu debit. habuit eid. J. remiſiſſet & relaxaſſet prout per ſcriptum præd. quod idem J. penes ſe habet, ut aſſerit, plenius poterit apparere; idem tamen R. ad ſcriptum præd. conſiderationem non habens, executionem de debito præd. in Curia noſtra coram vobis virtute Statuti præd. verſus præfat. J. proſequitur & ipſum J. occaſione

inde capi & in Priſona noſtra detineri procuravit in qua adhuc detentus exiſtit' in ipſius J. damnum non modicum & gravamen & vitæ ſuæ periculum manifeſtum ac contra formam Statuti prædicti. unde nobis eſt ſupplicatum ſibi per nos remedium adhiberi. Nos quod juſtum fuerit fieri volentes, Vobis mandamus quod Audita Querela ipſius J. in hac parte vocatiſque coram vobis partibus prædictis auditiſque hinc inde earum rationibus ac inſpecto ſcripto prædicto eidem J. Feſtivum Juſtitiæ complementum fieri faciatis prout de jure & ſecund' legem & conſuetudinem Regni noſtri Angl' *fuerit faciend' T. M. ipſo, &c.*

Note, That if a man enter into Statute or Recognizance, which either is defective in it ſelf, or is voidable by ſome Law, or becauſe the Contract is uſurious; or that there be a defeaſance upon it, which is kept from the Conuſor, or that the Statute is delivered up by the Conuſee, (which is a releaſe in Law) and the Conuſor get it again, and the Conuſee doth go on in the Execution of it. In all theſe caſes, the Party grieved may have this remedy and writ for his relief.

If the Statute were made through hard Impriſonment of the Conuſor, he may have this writ, &c.

Note, *J.W.* brought an *Audita Querela*, upon the Statute of uſury to be relieved in making void a Judgment given upon a Bond where he hath pleaded, that it was not his Deed, and it was diſallowed, and Judgment thereupon as followeth:

ET ſuper hoc præmiſſis prædict' viſis & per Juſticiarios hic plenius intellect' videtur Juſticiariis hic quod prædictum breve de Audita Querela materiaque in eodem content' minus ſufficiens in lege exiſtit ad prædict' R. executionem prædict' habend' retardand'. Ideo conſiderat' eſt quod J.W. nil capiat' per breve ſuum de Audita Querela. Et prædict' R. proſecut' pro executione, Si, &c.

If

If a man ſue an *Audita Querela* upon a Releaſe, and afterwards he is Nonſuit, he ſhall have an *Audita Querela* upon new matter, and yet the Law ſeems contrary to this, where it ſays, he ſhall not delay execution upon a new *Audita Querela.*

If the Conuſor after execution tender the Mony due upon the Statute of the Conuſee, and he refuſe it, or if part of it were paid at a day, and he tender the reſt in Court, and yet the Conuſee go on to extend it, in theſe caſes the Party grieved may have this remedy.

The Proceſs as we told you in *Audita Querela*, were *Venire facias*, *Diſtringas*, *Alias*, and *Plures*; only take this further, that if the Sheriff return, that he hath nothing, &c. Or* that he cannot be found, &c. then he ſhall have a *Capias* againſt the Defendent.

* *This Capias is to to be underſtood where the Sheriff returns a Nihil upon the Diſtringas, Alias and Plures.*

Curia Claudenda, *This is a Writ which lies at Com. Law, and is for reparation of Fences, Hedges, Mounds, &c.*

THis Writ lies where a man ought to incloſe his Soil or Land from his Neighbours, and will not do this, then he may have this Writ, and it may be ſued before the Sheriff in the County-Court, or in the Court of Common Pleas. If the Writ be before the Sheriff, then it runs thus: *F.N.B. 127. b.*

Breve de Curia de Clauden' in Com.

REX, *&c. Vic' E. ſalutem. Juſticies A. quod juſte, &c. Claudat' Curiam ſuam in N. quæ aperta eſt ad nocument' liberi tenementi B. in eadem villa (vel in alia) quam claudere debet ut ſolet ut dicit ſicut rationabiliter monſtrare poterit quod eam claudere debet, ne amplius inde clamorem audiamus pro defectu recti, &c.*

De eodem ad Bancum.

Pr. A. quod juſte, &c. claudat Curiam ſuam in N. quæ aperta eſt ad nocumentum liberi tenementi, &c. uſque ibi debet & ſolet ut dicit. Et in ſe, &c.

This Writ may be removed out of the County, at the Suit of the Plaintiff, without cauſe.

But if the Defendent will remove it, he ought to ſhew cauſe in the Writ.

And in the Writ to remove it by the Defendent ſhall be this clauſe, (*Fiat executio iſtius Brevis, ſi cauſa ſit vera, aliter non.*)

This Writ lies not, unleſs againſt him who hath the Cloſe next adjoyning unto the Land of the Plaintiff, and lies not, unleſs for him who hath an Eſtate of Free-hold in the Land; for Tenant for term of years ſhall not have this Writ, *F.N.B.* 128.

The Proceſs in this Action is Summons, Attachment, and Diſtreſs, &c.

The View lies in this Writ.

If the Defendent appear, and afterwards make default, he ſhall have a *Diſtringas* in lieu of a *Petit Cape*, &c. and if he make default at the day of the Return of this Writ, he ſhall have a Writ to enquire of Damages, and alſo a Writ to diſtrain to the Reparation.

If the Party appear, and that you come to declare, take theſe Obſervations:

In your Declaration you ought to ſhew the certainty of the Land which the Plaintiff hath there adjoyning unto the Defendents Land, and the certainty of the Land which the Defendent hath there adjoyning, who ought to incloſe, and then you ought to alledge Preſcription to incloſe.

Parco fracto, *or Breaking the Pound, comes next to be handled.*

THis Writ lies, where a man diſtrains the Beaſts of another man doing hurt, or for Rent or Services behind, and ſends them into the common Pound or place, which may be called a lawful Pound; and he which hath the property of the Beaſts,

Beasts, or another person take the Beasts out of the Pound, and driveth them to a place where he pleaseth; in this case, he that distrains for damage done unto him, or for Rent or Services behind, may have this Writ; wherein he shall have Judgment to recover Damages for it, and to distrain the Cattel again whereſoever he shall find them, *F.N.B.* 109.

For this cause also is the Party offending punishable in a Court-Leet.

If a man command his Servant to distrain for Rent or Services arrear, and the Servant distrain the Beasts, and put them in Pound, &c. and a Stranger take them out of the Pound; in this case the Master, and not the Servant shall have an Action of *Pureo fracto*, for it is the Pound of the Master, *F.N.B.* 100.

If a man distrain for Rent or Services, or for Damage-Feasant, and put the Beasts in the Soil, or in the Close of his Friends by his license, and he which owes the Beasts takes them out of the Close; here he which distrains shall have this Action, and not he who owed the Close; for he which owed the Close may have his Action, wherefore he brake his Close, &c. For it is not his Pound, but the Pound of him that distraineth, &c. The form of the Writ is thus:

REX, &c. Vic' L. salutem. Si A. &c. tunc pone, &c. Ostensurus quare cum idem A. in damno suo apud N. quadam Averia (vel sic) Averia prad' B. & C. cepisset, & ea secundum legem & consuetud' Regni nostri ibid' imparcasset iidem B.C. Parcum illum vi & armis fregerunt & Averia prad' ceperunt & abinde asport. Et alia enormia, &c. Ad grave damnum, &c.

Note here, this Writ is by force and arms, and it is not put in the Writ what manner of Beasts they were, nor what number, nor to whom the property of the Beasts are, unless at the pleasure of the Plaintiff.

Where a man commands his Servant to diſtrain for Rent or Services, or for Damage-Feaſant, then the Writ is thus:

OStenſurus quare cum idem A. in damno ſuo apud N. per C. per ſervientem ſuum quendam bovem vel quædam Averia capi feciſſet & idem C. bovem illum (vel ſic) Averia illa ſi cundum legem & conſuetudinem Regni noſtri imparcaſſet prædictus B. parcum illum vi & armis fregit & aperuit (vel ſic) Averia illa uſque N. duxiſſet & ea ibidem ſecundum legem & conſuetudinem, Regni noſtri, &c. prædᵗ B. &c.

Where a man diſtrains for an Amerciament in a Hundred, and impounds the Beaſts, and the other party takes them out, the Writ ſhall be thus:

OStenſurus quare cum idem A. per C. D. Ballivos ſuos de Hundredo de N. quoddam Jumentum ipſius B. apud S. infra Præcinctum Hundredi prad. pro quodam Amerciamentᵒ ad quod idem B. amerciat. fuit in eodem Hundredo ad opus prædictᵃ A. levanᵃ capi feciſſet & iidem Ballivi Jumentum illud ſecundum legem & conſuetudinem Regni noſtri ibidem imparcaſſent. prædictus B. Parcum illum vi & armis, &c.

Here in this Writ it ought to be ſhewed, that the property of the Beaſts were in him who was amerced, for that, that he cannot diſtrain a ſtrangers Cattel for his Amerciament.

But for Rent or Services arrear, it is otherwiſe, for there the Party to whom thoſe Rents or Services were arrear, may diſtrain what Cattel he finds upon the ground, levant and couchant.

This Writ lies, albeit the impounding be unlawful, as where the party that is diſtrained for Damage-feaſant, do offer ſufficient amends after the taking, and before the impounding, and the Party ſo diſtraining doth refuſe it.

The like caſe of one that hath a Replevin, or o-

ther

ther coloured Authority (not good in Law) by virtue whereof he gets out the Cattel.

Where a man hath a good Authority, and breaks the Pound before he demand the Cattel of the Keeper of the Pound, and he do interrupt him in the taking of them; in all these cases the Party grieved may have this Writ for his remedy.

The Processes in this Action after Summons, are Attachment and Distress infinite.

Rescous *we come now to treat of, and the rather, for that it hath some relation to that we spake formerly of.*

THe word *Rescous* is two ways appliable, either to Persons or Things.

To Persons, and that is, when a man is arrested, and he himself, or another in his behalf, doth rescue him.

The other relates to things, and of that we now treat, as having affinity to that of *Parco Fracto*, immediately before spoken of, *F.N.B.* 100.

This is a Writ lying, where one, or his Servant doth distrain for Rent, Services, or Damage-feasant, or for any other cause, and being about to impound the Distress, another taketh it away from him, and will not suffer him to impound it; in this case the Party hurt or grieved may have this Writ for his relief against him that made this rescous, and shall recover Damages for it.

Where a man distrains Cattel, and in driving them to the Pound they get into the Owners house, and he doth withhold them from the distraining, and he will not suffer him to drive them to the Pound; this is a Rescous, for which this Action lies.

If a man be coming to distrain, and the Owner drive away the Cattel, and he that is about to distrain doth follow them upon a fresh pursuit, and

the Party will not let him have them, but drive them away; in this case he may have this writ as his remedy.

But if before one be come in sight, the Owner drive out the Cattel, or they go out themselves, so that he misseth of that Distress he intended, this writ will not lie for this.

"Note, that if a Bayliff or Sheriff, or other Of-"ficer arrest a man, or distrain for Debt, or other "service due to the King, and Rescous is made "thereof, then the Bayliff, or other Officer, shall "have the writ of Rescous in his own name, and "not the King. And if a Sheriff command the "Bayliff of a Liberty to levy certain Fines and "Amerciaments for the King, and the Bayliff di-"strain for the same certain Beasts, and Rescous is "made thereof, then in this case the Lord of the "Liberty shall have this writ for the Rescous done "against his Bayliff, and for the Assault and Batte-"ry committed against him, and for the loss of his "service, and all this in one Writ, *F.N.B.* 102.

"If a Lord distrain his Tenant for Rent, when "there is none in arrear, the Tenant may make Res-"cous, and it shall not amount to a disseisin of Rent; "And that which the Tenant may do when there is "no Rent behind, may a Stranger do if his Beasts "be distrained.

"If the Tenant tender Rent to the Lord, when "he is about to take the Distress, if notwithstanding "the Lord will distrain, the Tenant may make Res-"cous.

"If the rent of the Lord be behind, and the "Lord distrain the Cattel of the Tenant in the "Highway within his fee, the Tenant may make "rescous, for he is defended by Law if the Distress "be taken in the Highway; and by the same reason,

"if

"if the Lord will diſtrain *Averia Caruca*, where "there is a ſufficient Diſtreſs to be taken beſides, or "if the Lord diſtrain any thing that is not diſtrain-"able by the Common Law, or by any Statute, the "Tenant may make reſcous.

If the Lord diſtrain his Tenant without cauſe, and unjuſtly, and it be reſcued, it ſeems this Action doth lie.

Note, that if any other but the Lord do diſtrain upon his Tenant without cauſe, or out of time and place, in any of the Caſes before recited, this Action will not lie.

The Proceſſes in this Action are as follow:

The firſt is a Summons, and then Attachment, and *Diſtringas*, and then *Alias* and *Plures Diſtringas*.

The writ of Summons is thus:

REX, &c. Vic. L. ſalutem. Si A. &c, pone, &c. Oſtenſurus quare cum idem A. in damno ſuo apud S. quadam Averia, (vel ſic) Averia prad. B. cepiſſet & ea ſecundum legem & conſuet. Regni noſtri nuper imparcare voluiſſet: Praditus B. Averia pradict. vi & armis reſcuiſſet & alia enormia, &c. ei intulit. Ad grave damnum, &c. & contra pacem.

Aliter per ſervientem.

OStenſurus quare cum idem A. in damno ſuo apud S. per C. ſervientem ſuum quadam Averia (vel ſic.) Averia prad. J. B. capi feciſſet & idem C. Averia illa ſecundum legem & conſuet' Regni noſtri imparcare voluiſſet: Praditus B. Averia pradicta vi & armis reſcuiſſet, & alia enormia, &c. Pro conſuet' & ſervic.

Note, where a man diſtrains Beaſts and dead Chattels, there the Writ is thus;

OStenſurus quare cum idem A. in feodo ſuo apud S. pro conſuet. & ſerviciis ſibi debit. per C. ſervientem ſuum quadam Averia Capi (vel ſic) quandam Carect. ipſius B. capi feciſſet. Et idem C. Carectam illam uſque

Mane-

Manerium prædᵗ A. de S. secundum legem & consuetudinem Regni nostri Angl' *detinendum ducere voluisset prædᵗ B. Carectam illam vi & armis rescussit & ipsum, &c.* *De Averiis & Catallis.*

If the Party appear not upon the Summons, then as before you are to proceed to Attachment and Distress infinite.

In case he appear, you may declare as follows:

O *Stensurus quare cum idem A. in feodo suo apud S. pro consuetudinibus & serviciis sibi debitis, quædam Averia & Catalla, vel Averia & Catalla prædᵗ B. cepisset, & Averia illa ibidem imparcare & catalla nomine districtionis secundum legem, & consuetᵗ Regni nostri* Angliæ *ibidem retinere voluisset, idem B. Averia illa vi & armis rescussit. Et Catalla prædᵗ eidem A. abstulit & alia enormia, &c.*

WArr. T. G. nuper, &c. Attachᵗ fuit ad respondendᵗ T. B. de placito quare cum idem T. B. in feodo suo apud C. pro consuetudᵗ & serviciis sibi debitᵗ per C. A. Ballivum suum quædam Averia capi fecisset & idem T. B. Averia illa secundum legem & consuetudinem Regni Dom. nostri Regis *Angliæ* ibidᵗ imparcare voluisset prædᵗ T. G. Averia illa vi & armis rescuisset. Et alia enormia ei intulit ad grave damnum ipsius T. B. & contra pacem Dom. Regis nunc. &c. Et unde idem T. B. per J. H. Attornᵗ suum querit. quare cum idem T. B. decimo die N. An Regni Dom. Regis nunc xv. in feodo suo in uno messuagio, & uno gardino cum pertinᵗ quæ prædᵗ T. G. tunc tenuit de ipso T. B. per fidelitatᵗ & reddᵗ decem solidᵗ singulis annis ad Festa S. *Mich. Archang.* & *Paschæ* tenuit per æquales portiones solvendᵗ de quibus serviciis idem T. B. fuit seisitus per manus prædᵗ T. G. ut per manus veri tenentis sui pro consᵗ. & servicᵗ, videlᵗ pro decem solidᵗ eidᵗ T. B. pro uno anno integro finit. ad Festᵗ S. *Mich. Archang.* prox. ante prædᵗ

deci-

decimum N. Anno xv. ſupradicto debit' per præd. T. G. Ballivum ſuum quædam Averia videl' duas vaccas nomine diſtrictionis capi feciſſet & idem T. G. Averia illa ſecund' legem & conſuet' Regni Dom. Regis *Angliæ* ibidem imparcare voluiſſet. Prædictus T. G. præd' decimo die N. Anno xv. ſupradict. Averia illa reſcuſſit. Et alia enormia, &c. Ad grave dämnum, &c. Et contra pacem, &c. Et unde, &c.

Et prædictus T. G. per J. R. Attorn' ſuum ven' & defend' vim & injur' quando, &c. Et quoad venire vi & armis & quicquid, &c. dicit quod ipſe non eſt cul' de tranſgreſ. & reſcuſſu prædict' prout prædict. T. B. ſuperius verſus eum queritur & hoc petit. &c. Et quod reſiduum tranſgr' ſuperius fieri ſuppoſit' idem T. G. dic' quod præd. T. B. Actionem ſuam prædict. verſus eum habere non debet quia dic. quod tenementa cum pertin' ſunt & prædicto tempore quo ſuppon' tranſgreſſionem & reſcuſſ. præd' fieri, fuerunt extra feod' ipſius T. B. Et hoc, &c. unde petit Judic. ſi præd. T. B. Actionem, &c. Et præd' T. B. dic' quod ipſe per aliqua per eundem T. G. præallegat' ab actione ſua præd' verſus præd' T. G. habend' præcludi non debet, quia dicit quod tenementa præd' cum petit. ſunt & præd' tempore quo, &c. fuerunt infra feod' ipſius T. B. prout idem T. B. per breve & narrationem ſuam præd' ſuperius ſuppon. Et de hoc pon. ſe ſuper patriam. Et præd' T. G. ſimiliter. Ideo, &c. xij, &c.

Aſſize *comes now to be treated of, an Action which formerly was much in uſe, and although for the preſent not ſo much in practice, yet to preſerve the knowledge of it, we ſhall here diſcover ſomewhat of the nature of the Action, together with the proceedings thereupon.*

THe Proceſs is Attachment againſt the Party, Summons, *Habeas Corpora*, and *Diſtringas*, Vid. 3 106.

Aſſizes

Assizes were *Temp. Devant. &c.* but the Novel Disseisin was since the Conquest, 2 *Inst.* 25.

Before the Statute of *Magna Charta* Assizes were returnable either *Coram Rege*, or in the Court of Common-Bench.

The Defendent shall not be essoyned, he shall not have a Prohibition, he shall not pray in aid, unless of the King.

He shall not vouch any party to the Rent, unless he enter into Warranty presently.

The same Law of Resceit.

The Parol that shall not demur for Infancy.

A *Size* is a VVrit, and it lieth where a man is put out of his Lands, Tenements, or of any profits, to be taken in a certain place, as of an Office, &c. and so disseised of the Free-hold, (which Free-hold to any man is where he is seised of Lands, or Tenements, or profits to be taken in Fee-simple, Fee-tail for term of his own life, or for term of another mans life) but Tenant by *Elegit*, Tenant by Statute-Merchant, Tenant by Statute-staple, may have Assize, although they have no Freehold, and this directed by divers Statutes.

In an Assize it is always needful that there be a Disseisor and a Tenant, or otherwise the VVrit shall abate.

Also where a man is disseised, and recovereth by an Assize of Novel Disseisin, and afterwards is again disseised by the same Disseisor, he shall have against him a writ of Redisseisin directed to the Sheriff to make inquisition, and if the Redisseisin directed to the Sheriff to make inquisition be found, he shall be sent to Prison: Also, if one recover by an Assize of Mortdancester, or by other Jury, or by default, or by rendition; and if he be another time disseised

diſſeiſed, then he ſhall have writ *De poſt Diſſeiſin*, and he which is taken and impriſoned for the Rediſſeiſin, ſhall not be delivered without ſpecial Commandment of the King. See the Statute thereof, *Merton* chap. 3. *Marlebridge* chap. 8. and *Weſtm.* 2. chap. 26.

There is alſo another Aſſize, called an Aſſize of Freſh-Force, and lieth, where a man is diſſeiſed of Tenements which are deviſable, as in the City of *London*, or other Burroughs or Towns, that be Franchiſes, then the Plaintiff ſhall come into the Court of the ſaid Town, and enter his Plaint, and ſhall have a Writ directed to the Mayor or Bayliffs, and thereupon ſhall paſs a Jury in manner of Aſſize of Novel diſſeiſin; but it behoveth, that he do enter his Plaint within 40 days, as it is ſaid, or otherwiſe he ſhall be ſent to the Common Law, and if the Officers delay the Execution, then the Plaintiff ſhall have another Writ to have Execution, and a *Sicut Alias*, and a *Plures*.

This Aſſize brancheth it ſelf further into 1. an Aſſize of *Darrein Preſentment*, of which we have before ſpoken.

2. Aſſize de *Mortdanceſter*.

An Aſſize of *Mortdanceſter* ſhall be brought in like manner as an Aſſize of Novel Diſſeiſin ſhall be; and in Aſſize of Novel Diſſeiſin before the Juſtices of the Common Bench or of the Kings Bench, a certain day ſhall be put in there, as unto Thurſday after 15 days after Eaſter, &c. but in an Aſſize of *Mortdanceſter*, a common day ſhall be given, and 15 days, &c. or in eight days, &c.

Vid. F. N. B. 177, *&c.* IN an Aſſiſe of Novel Diſſeiſin in the Common-Bench, or in the Kings-Bench, the Juſtices may give a day out of Term; unto Thurſday next after ſuch a Feaſt, for that an Aſſize hath not any day after a day of Return in the

the Term, but a certain day which the Justices will give him, and this may be as well out of the Term as in the Term, and that by the Statute of *Articuli super Chartas*, which directs, that in every Writ of Summons and Attachment there ought to be 15 days between the date and the return of it: but in an Assize of Novel Disseisin in the Common-Bench or in the Kings-Bench, there need not to be had 15 days between the date and the return of it, as it seems by the Statute.

In an Assize of Novel Disseisin sued before Justices in Eyr, or before the Justices of the Kings-Bench or of the Common-Bench, the Plaintiff needs not to have have any Patent to the Justices, for they have authority without patent, and so have the Justices of Assize authority take Assize of Novel Disseisin without any patent made unto them, and that by the Statute of *Westminster* 2. cap. 13.

If the Assize be brought in the Kings-Bench, or in the Common Bench, then the Writ runs thus:

Aliter Coram Rege.

REX Vicecom' L. salutem. Questus est nobis A. quod B. injuste, &c. usque ibi esse in pace, usque ad diem Sabbati proximum post Craſtinum Animarum proxime futur. Et interim, &c. Et summoneas, &c. quod tunc sit Coram nobis apud Westm' *vel Coram Justiciariis nostris apud* Westm' *parat' inde, &c. Et habeas, &c.*

If the Writ be brought before the Justices of Assize, then the alteration is thus,

The Writ is all one with the former, till after the word (*Peace*) and then you say, until the next Assizes, when our Justices shall come into those parts.

If the writ of Assize be brought before other Justices, then to the Justices of Assize in the same County, and then the Writ is as followeth.

REX

REX Vic. L. ſalutem. Queſtus eſt nobis A. quod B. injuſte & ſine Judicio diſſeiſivit eum de libero tenemento ſuo in E. poſt primam transfreation. Dom. H. Regis filii Regis Johannis *in Vaſcon. Et ideo tibi præcipimus, quod ſi prædictus A. fecerit te ſecurum de clamore ſuo proſequend' tunc facias tenementum illud re-ſeiſ. de catallis quæ in ipſo capta fuerint, & ipſum tenementum cum catallis eſſe in pace uſque ad primam Aſſiſam cum Juſticiarii noſtri in partes illas venerint. Et interim facias xij. liberos & legales homines de viceneto illo videre tenementum illud & nomina eorum imbreviar. Et ſummoneas eos per bonos ſummonitores quod tunc ſint coram præfatis Juſticiariis ad præfatam Aſſiſam, parati facere cognitionem. Et pone per Vadia, & ſalvos plegios prædictum B. vel Ballivum ſuum ſi ipſe inventus non fuerit quod tunc ſit ibid. auditur. illam Recognitionem. Et habeas ibidem ſummon' nomina plegiorum, & hoc breve T. me ipſo apud W. primo die F. &c.*

Upon this Writ there ought to be a ſpecial Patent directed to the ſame Juſtices, for that they are not Juſtices of Aſſize for that County.

If a man have Rent-ſervice, Rent-charge, or a Rent-ſeck iſſuing out of Land for term of life, or in Fee tail, or Fee-ſimple, if he be diſſeiſed of this Rent, he ſhall have a writ of Aſſize of this Rent, and the Writ ſhall be general, That unjuſtly, &c. he did diſſeiſe him of his Freehold in *N.* And he ſhall make his title to the Rent, &c. when he declares, &c.

A man may have an Aſſize of divers Rents, or of Land, and Rents, and Offices, and Profits, to be taken in a mans ſoil, and all in one Writ.

If a man have any Profit granted unto him out of any Lands for term of life, or in Fee, to have the fruits, whether Apples, Pears, Nuts, or Acorns, or other Profits whatſoever, he may have an Aſſize of them; if he be deforced of them.

So likewise of a Toll of a Market, of a Passage or Ferry of *Pontage* or *Passage*, and other like things, he may have this writ of Assize.

What Seisin is sufficient to have an Assize.

Vid. Kitch. Engl. 20.

SEisin of parcel of the Rent is sufficient to have Assize of all the Rent.

The Provost or Warden of a Colledge shall have an Assize for Rent, where his Predecessor was seised, and not he himself; for the Seisin of the Predecessors is the Seisin of the House. The same case of the Wardens of an Hospital.

"Assize is not maintainable against him which "hath but a Freehold in Law; for of that Seisin an "Assize doth not lie.

"Seisin of Fealty, is not sufficient Seisin to have "an Assize of rent, but it is a sufficient Seisin to "make avowry for all, that is as well for the Rent "as for the Fealty.

"Of a thing transitory, a man shall be in possession without Seisure: As if my Tenant dies, his "Heir within age, I shall have a Ravishment of "Ward without a Seisure; but I shall not have an "Ejectment of Ward of Land, which is local, nor "Assize of Land, without first having possession indeed.

If a man which hath a title to enter, set his foot upon the Land, and is outed, that is a sufficient Seisin for me to have an Assize.

If one put in his Beasts to use my Common by my commandment, this is a sufficient Seisin for me to have an Assize.

Using of Common by Tenant at will, is sufficient Seisin for him in the Reversion to have an Assize of Common, if he or his Tenant at will be disturbed.

Reversion was granted to *J. S.* and the Tenant for life attorns and dies, and *J. S.* enters by the windows,

dows, (for that he cannot enter by the door) when one half of his body was in, he was pulled out, and yet that is a sufficient Seisin to have an Assize.

The Process in this Action are Summons, Attachment and Distress.

Where you are to declare, you may in case it be for Common of Pasture make the ensuing your precedent.

Buck. ff. A *Sisa ven' recogn. Si R. J. H J. & W. J. injuste, &c. disseisiv. J. W. & M. uxorem ejus de libero tenemento suo in T. infra triginta annos jam ult' elapsa. &c. Et unde idem J. & M. per J. T. Attorn' suum quer' quod præd. R. H. & M. disseis. ill. de uno messuag. & quatuor acris pasturæ cum pertin' &c. super quo Assisa præd' ex assensu partium prædictarum propter temporis brevitatem remanet' capiend' coram præfat' Justic' ad Assisas & his quos Dominus Rex eis associavit usque proxim. Assisas, videlicet die Lunæ tunc prox' sequen' apud parvam B. in Com' prædict' proxe. tenend. Ideo vic' habeat tunc ibidem corpora recogn', &c. & appon. decem tales, &c. Et interim, &c. Idem dies dat' est tam partibus prædictis et eorum recogn' quam recogn' Assisæ præd' ad tunc et ibidem, &c.*

Ad quem quidem diem præd' J. et M. quoad prædict' quatuor acras pasturæ in querela præd. spec' cum pertin. juxta formam statuti in hujusmod' casu provis. all. remanere querelam suam præd', &c. Inde, &c. Et modo ad hunc diem Lunæ in ven. tam præd' J. et M. quam prædict' R. J. H. J. et W. J. per Attorn. suos prædict' et præd' H. J. et W. J. dic' quod ipsi nullam injur. seu disseisin' præfat' J. W. et M. inde fecer' et de hoc pon. se super Assisam, et prædict' J. W. et M. similiter. Ideo capiatur inde int. eos Assisa, &c.

Et prædᵗ R. J. ut tenens messuag. prædᵗ cum pertinᵗ in visum positᵗ & in querela prædictᵗ specᵗ cum pertinᵗ Absque hoc quod prædᵗ H. J. & W. J. aliquid habuerᵗ in messuagᵒ prædᵗ die impetrationᵗ Assisæ prædᵗ vel unquam postea, & quod prædᵗ messuagᵒ cum pertinᵗ dictᵗ R. J. dicᵗ quod assisa inde int. ipsum & prædᵗ J. W. & M. fieri non debet, quia dicᵗ quod quidam R. T. & M. T. T. W. & S. S. fuit inde seisit. in Dominᵒ suo ut de feodo & sic de prædᵗ messuagᵒ seisitᵗ existenᵗ per chartam suam feoffamenti gerenᵗ datᵗ xxvj. *die* Septem. *Anno Regni Regis* Henrici vj. *post conquest.* xxiv. *De dicto messuagio feoffaverunt quendam H. J. habendᵗ eidᵒ H. & hæredᵗ suis in perpetuum, virtute cujus feoffamenti dictus H. J. fuit de messuagᵒ prædᵗ seisitᵗ in dominico suo ut de feod. Cujus quidem H. Stat. in dicto messuagᵒ cum pertinᵗ prædictᵗ R. J. modo habet & prædictᵗ J. W. & M. clamando messuagᵒ prædᵗ cum pertinᵗ colore cujusdam chartæ Feoffament. iisdem J. & M. per prædᵗ R. M. T. & S. factᵗ per quam quidem chartam nihil. messuagᵒ prædᵗ cum pertinᵗ in possessionem suam transivit in messuagᵒ prædictᵗ cum pertinᵗ intraverunt super possessionem quorum quidem R. & M. inde quidam J. T. intravit prout, super cujus quidem J. T. possessionem, inde prædictᵗ R. J. reintravit ei bene licuit super quo prædᵗ J. W. & M. arran. Assisam suam prædᵗ & hoc paratᵗ est verificare, unde petᵗ Judicium si prædᵗ J. W. & M. Assisam suam prædictᵗ versus eum manutenere debeant, &c.*

Et prædᵗ J. W. & M. dicᵗ quod ipsi per aliqua prædallegatᵗ ab Assisa sua prædᵗ præcludi non debent, quia dicᵗ quod bene & verum est quod prædᵗ H. J. fuit seisitᵗ de messuagᵒ prædictᵗ cum pertinᵗ in dominico suo ut de feodo & sic seis. dedit messuagᵒ prædᵗ cum pertin. intᵃ alia cuidam W. J. filio suo, & J. uxori ejus, & hæredᵗ de corporibus eorum legitime procreatᵗ prætextu cujus idem W. & J. fuerᵗ inde seis. in dominico suo ut de

feodo talliat. Et habuer' exit' inter eos legitime procreat' M. & J. quæ quidam M. cepit in virum ſuum ipſum J. W. modo quer. Et poſtea præd' W. & J. obierunt poſt quorum mortem meſſuag' præd' cum pertin' virtute Doni præd' diſcend' præfat' M. ut fil' & hæred' dict' W. & J. de eorum corporibus legitime procreat' per quod iidem J. W. & M. in meſſuagium præd' cum pertin' en jure ipſius M. intraverunt & fuer. Inde ſeiſ. in Dominico ſuo ut de feodo talliat' in jure ipſius M. prætextu Doni præd' & ſic fuer' inde ſeiſ. quouſque præd' R. H. & W. in breve Aſſiſ. præd' nominat' ipſos J. W. & M. de meſſuagio prædict' cum pertin' injuſte & ſine judicio & vi & armis diſſeiſiverunt. Et hoc parat' ſunt verificare, unde pet' judicium. Et procedatur inde inter. Et præfat' R. J. & W. ad capt' Aſſiſ. & præd', &c.

There are ſeveral Pleas eſpecially to be pleaded in this Action, both in Bar and Abatement, which ariſe according to the title of the Defendents part.

A Leaſe for years, or for life, the Reverſion to the Plaintiff, or a Feoffment of the Plaintiffs, with warranty, and rely upon the warranty, is a good Bar.

"The Diſſeiſor may plead a Releaſe of Actions "perſonal in bar, but not releaſe of Actions real, "for none ſhall plead that but the Tenant.

"Diſſeiſor cannot plead Record, or Eſtoppel, for "by the failing of the Record he cannot loſe the "Land.

"Diſſeiſor may plead entry of the Plaintiff, after "the laſt Continuance and Joyntenancy; for he "may plead all Pleas, which excuſe him of Dama-"ges, or which are in bar, which do not diſtinguiſh "the Right of the Land.

The Tenant may plead, that partition was made between the Plaintiff and *J. S.* whoſe Eſtate he hath, and it is a good bar.

If the Plaintiff chooſe one to be his Tenant of all where he is not, the Writ ſhall abate.

An Aſſize is brought of Tenements in *D.* and *S.* the Tenant ſays, that all is in *S.* that being ſo, the Writ ſhall abate, for he cannot abridge the whole Town, but ſee now by the Statute of 23 *Hen.* 8. ca. 3. where he may abridge.

"If the Tenant plead in bar, and the Plaintiff "makes title, and the Tenant doth not traverſe that, "the Aſſize ſhall be awarded at large.

"If the Bar be ill pleaded, and the Title good, "the Aſſize ſhall be awarded in point of Aſſize, and "not upon the Title; for if it be ill on the part of "the Defendent, the Aſſize ſhall be awarded in "point of Aſſize, that is to ſay, of Seiſin and Diſ-"ſeiſin.

"The Tenant pleads Forreign Releaſe, and it is "found againſt him, notwithſtanding the Deed of "the Plaintiff, now the Aſſize ſhall be awarded in "Right of Damages, for an outing is confeſſed im-"plicitely by pleading a Releaſe.

"In Point of Aſſize it is, when the Tenant pleads "no wrong, no Diſſeiſin, and out of the Point, is "properly when the Tenant pleads Forreign Re-"leaſe, or Forreign Matter, triable in another Coun-"ty; and in right of Damages is, when the Tenant "acknowledges over, and pleads matter which is "found againſt him, or acknowledgeth over or De-"murs in Law, and that is adjudged againſt him, "now the Aſſize ſhall be taken in right of Damages.

"Where the Tenant pleads a Record, and fails "of that, by the Statute the Aſſize ſhall be awarded "in Right of Damages.

"If the Tenant acknowledge an Outing in his "Plea, the Aſſize ſhall be awarded in Right of Da-"mages.

The

The Plaintiff may plead *Non tenure*, of misnaming of the Plaintiff, but not of his Master, and conclude it, &c.

The Bayliff may plead, that the Tenements are in another Town, for that is an abatement.

The Bayliff may plead Misnaming and Joyntenancy without Deed.

A Bayliff may plead not attached by 15 days.

After Adjournment upon the Plea of the Bayliff, the Tenant may plead matter which comes of latter time.

The Tenant himself, after the Assize awarded, may leave his Bar, and plead the general Issue, but he cannot plead a new Bar after Issue.

If a Plea be pleaded, and the Justices die, all shall be pleaded anew; but if they be at Issue that shall stand.

Where they are adjourned upon a Plea in abatement, and after the writ is awarded good, he may afterwards plead in Bar.

Thus much may suffice to have spoken of Assize.

We should now come to treat of divers other Actions, as *Contributione faciendâ*, *Quid Juris clamat*, *Per quæ servitia*, *Et per quem redditum*, and divers others of those natures, and finding them to be very obsolete and out of use, and that the Law hath provided remedies by the foregoing Actions in most of those Cases, and that the proceedings thereupon (chiefly for the trying of the Titles) are far more expeditious, and more certain, and with less trouble and danger to the Client; therefore I shall omit them.

We have now gone through the most general and useful Practice of the Common Pleas, relating to the several Actions before-going; as also of all Offices and Officers incident to that Court: And now, as before we promised, hereto is added a Table of

the Fees of that Court, and of all Offices whatsoever relating to the Court, or the Practice of it, belonging to every Office or Officer, which follow in order.

The Fees hereunder mentioned, are the Fees due and paid to the Lord Chief Justice, and the other Justices of the Court of Common Pleas at Westminster, *as they were due, and usually paid to the Justices of the same Court.*

The Lord Chief Justice his Fees.

FOr allowance of a writ of Error upon an Outlawry before Judgment, 20 s.

For a Bail taken upon an Outlawry upon mean Process in debt, if the debt be 20 l. or above, 2 s. 4 d.

For the allowance of a writ of Error upon a Judgment, 20 s.

For Bail taken in case of Debt after Judgment, 12 s.

For the allowance of a writ of Error upon a Judgment upon a *Scire facias*, and Outlawry after Judgment, 35 s.

Marking the Roll. For marking the Roll that the writ of Error is allowed on, 2 s.

Supersedeas. For a *Supersedeas*, 3 s.

Transcript. For the Transcript of a Record, being a Press, 6 s. 8 d.

For every Press more, 6 s. 8 d.

Certiorari. For the Return of every *Certiorari*, 14 s. 9 d.

Seal Nisi Pr. For the Seal of every Record of *Nisi prius*, 2 s. 1 d.

Seal of Writs, For the Seal of every Writ sealed in Court, 1 d.

and Exemplif. For the Seal of every Exemplification, 2 d.

These

These Fees following are due to such of the Judges who do perform the Business.

For acknowledgment of a Fine, or Warrant of Attorney, for a common Recovery of Courts, 6 s. 8 d. *Fines.*

For signing every writ of Priviledge to remove any Cause, *Habeas corpus*, *Procedendo*, or *Supersedeas* upon a *Procedendo*, 4 s. *Sign. Writs.*

For every Bail taken out of Court upon any such writ of Priviledge, wherein one Cause only is returned, 9 s. 8 d. *Bails.*

For the confession of a Judgment out of Court, 9 s. 8 d. *Confessions.*

For every Philizers Bail, and other Bail taken out of Court. 9 s. 8 d. *Bails.*

For acknowledging Satisfaction out of Court, 9 s. 8 d. *Satisfaction.*

For acknowledging out of Court a Deed to be Inrolled, 9 s. 8 d. *Deeds acknowledged.*

For admission of a Guardian out of Court, 9 s. 8 d. *Guardians.*

For the proof of a Suggestion out of Court, for every Witness, 9 s. 8 d. *Suggestion.*

For a Warrant for passing of a Fine, where there are more than three Cognizors, or three Cognizees, parties to the Fine, or where a Knight is not at the Caption, 4 s. *Warrant for Fines.*

For every *Affidavit* taken out of Court upon a Foreign Plea, or Rescous, 2 s. *Affidavit.*

For any other *Affidavit* taken out of Court, 8 d.

For exhibiting any Informat. out of Court, 8 d. *Information.*

For signing a Bill of Costs to award an Attachment for not appearing upon a *Subpœna*, 8 d.

For granting a Licence to compound upon a penal Law, 2 s.

For assessing of the Kings part upon a Forfeiture

ture upon a penal Statute, after compoſition with the Informer, 2 s.

Commitments. For the Commitment out of Court of a Priſoner to the *Fleet*, charged with one cauſe only, 9 s. 8 d.

Bails in Outlawries. For every Bail taken out of Court upon an Outlawry in Debt upon mean Proceſs reverſed, if the ſame be twenty pounds, 2 s. 4 d.

Divident Fees.

Fees in Court to the Box. *Theſe Fees following are due to the Lord Chief Juſtice, and the other Judges of the Court of Common Pleas, by way of Divident.*

Judgment. For confeſſing of Judgment in Court, 6 d.

Satisfaction. For acknowledging ſatisfaction in Court, if the Debt or Damage do not amount unto 100 l. 6 d.

If the Debt or Damage do amount to 100 l. 12 d. and for every 100 l. after the ſame rate, 12 d.

Guardian. For admitting an Infant in Court to his Guardian, 12 d.

Outlag. For reverſing an Outlawry in Court, for Error in the Exigent, or Return, 12 d.

For the like, for the inſufficiency of the Proclamation, 2 s.

Recovery. For every Common Recovery acknowledged in Court, 6 d.

Fines. For a Fine acknowledged in Court, 6 d.

Bails. Recognizanc. For a Bail taken in Court, a Bail or Recognizance acknowledged in Court, 12 d.

Deeds. For a Deed acknowledged in Court to be inrolled, 12 d.

Diſcontin. For a Diſcontinuance, 12 d.

Prohibition. For a Prohibition granted, 9 s. 4 d.

Wagers of Law. For every Wager of Law, or Nonſuit upon a Wager of Law, 6 d.

Attorney ſworn. For admiſſion of any perſon to be an Attorney of this Court, 20 s.

The

The Puisne Judges Fees.

FOr every Fine drawn at Bar, 12 d. *Fines.*

For a Recovery drawn at the Bar with a single Voucher, 18 d. *Recoveries.*

For every Voucher more, 6 d.

For Reversal of an Outlawry in Court, 4 s. *Reversals.*

For taking of a privy Verdict, 6 s. 8 d. *Privy Verdict.*

For taking of Costs upon every Verdict, 12 d. *Costs taxed.*

From the Clerk of the Warrants every Term, to either of the Puisne Judges, 33 s. *Feod. annuale Clericus War.*

For every Attorney, whose Name is recorded in the Roll of Attornies every Term, 4 d. *Rec. Attorn.*

For Inrolling and examining the parts of a Fine, and Writs upon Common Recoveries, by the Statute of 23 *Eliz.* 6 s. *Inrolling Fines and Recoveries.*

For the Exemplification and Examination of the parts of a Fine, and Writs upon Common Recoveries, by that Statute, 5 s. *Exemplification thereof.*

For drawing and entring a Rule for an Amendment upon that Statute, 12 d. *Rules for Amendments.*

For a search made upon the Inrolment upon that Statute, 4 d. *Searches.*

For a Copy of a Fine, or Writs inrolled upon Common Recoveries, by that Statute, for every sheet, 4 d. *Copies.*

For the return of every writ of Covenant brought to levy a Fine upon, 10 d. *Ret. of Writs of Covenants and Entries.*

For the Return of every writ of Entry to suffer a common Recovery, every writ of Summons and Seisin thereupon, 10 d.

An ancient Fee of 6 s. 8 d. for signing of a *Dedimus Potestatem*, due to the Judges of any Court, who do assign the same, which is now, and of late hath been divided amongst all the Judges that ride the Circuits. *Signing Dedimus Potestatem.*

These

These Fees following are due to the Clerks of the Lord Chief Justice, and the other Justices of the said Court.

Fines. TO all Judges Clerks of the Fines, for taking of a Fine, or warrant of Attorney, 3 s. 4 d.

Warr. of Attorn. For certifying of a Fine, or Return of a *Dedimus Potestatem*, 16 d.

Bails. To the Judges Clerk of Bails, for taking every Bail, 12 d.

Caveat. For entring every *Caveat* to give notice that good Bail may be taken, 12 d.

Satisfaction. For Satisfaction acknowledged out of Court, 12 d.

Deeds acknowledged. For a Deed acknowledged out of Court to be inrolled, 12 d.

Suggestion. For the proof of a Suggestion out of Court, for every Witness, 12 d.

Affidavits. For an *Affidavit* taken out of Court, 4 d.

Information. For entring into his Book an Information exhibited out of Court, 4 d.

For entring into his Book of Costs a Warrant signed to award an Attachment for not appearing upon a *Subpœna*, 4 d.

Guardian. For admission to a Guardian, 12 d.

Licenses. For entring into his Book a License to compound upon a penal Law, 4 d.

For entring into his Book the Kings part of the forfeiture upon a penal Law assessed by the Judges, after composition with the Informer, 6 d.

Commitment. For entring into his Book a Commitment out of Court of a Prisoner to the *Fleet*, charged with one cause only, 12 d.

Inrolment of Fines, Recoveries, &c. To the puisne Judges Clerk of the Inrolments, for Copying, Inrolling, and Examining the parts of a Fine and Writs upon a Recovery, by the Statute of 23 *Eliz.* 8 s. 4 d.

For

For a search made for an Inrolment upon that Statute, 8 d.

For writing a Fine, or Writs inrolled upon a common Recovery, inrolled by that Statute, 8 d.

The *Custos Brevium*, who is the prime and first Officer of the Court, his Fees.

These Fees following are the Fees which are taken by the Custos Brevium *of his Majesties Court of Common Pleas, and his Clerks in right of his said Office, and as they were taken* 11 Eliz. *by the then Master of the said Office, and his Clerks.*

In primis, for filing any writ, or other Record, coming after the day of the Return thereof, except writs of Priviledge, *Devenienda & redenda*, and also writs of Priviledge called *Prop.* or *Post diem*, 4 d. *Post-diem.*

Item, for filing any writ, or other Record (except before excepted) coming after the Term wherein it was returnable called a *Post-Term*, 20 d. *Post-Term.*

Item, for filing any writ, or other Record, coming after two Terms, called *Post-Terminos*, for every Term after, 20 *d.* apiece; except Exigents and Outlawries, which pay but only, 1 d.

Item, to the Clerk of the same Office (*ab antiquo*) who enters the same, 2 d.

Item, Upon the making of the Stat. 4 *H.* 7. c. 24. the *Custos Brevium* was allowed by the Court, for carrying and re-carrying of every Fine levied according to that Statute, to *Westminster*, to the Chirographer to proclaim, four Terms, 8 d.

Item, for keeping three parts of the Record of every Fine consisting of 5 parts, 4 *d.* apiece, 12 d.

In tot. for every Fine 3 *s.* 8 *d.* whereof the Master hath 2 *s.* 6 *d.* and 14 *d.* is allowed to the Clerks, 3 s. 8 d.

Item,

Amendments. *Item*, for the amendment of every Writ, or other Record, *per Warrant. Cur.* 20 d.

Non eſt fact. *Item*, for every *Non eſt factum* pleaded in Court, 2 s.

Sheriffs bundle. *Item*, for every Sheriffs bundle of writs returnable of the precedent Term, and coming before Eſſoyn day of the ſecond Return of the new Term, 8 d.

The uſual Fees allowed by the Cuſtos Brevium *to the Clerks of his Office.*

Searches. IN primis, for every Temple-ſearch, 4 d.

Certiorari. *Item*, out of every *Weſtminſter* ſearch, 2 s. 1 d.

Item, to the Clerks out of the allowance of every *Certiorari* 2 s. 7 d. and for certifying the ſame, *ſecundum longitudinem*, and according to reaſon, 2 s. 7 d.

Exemplificat. *Item*, to the Clerk for writing and examining of every exemplification, *ſecundum longitudinem*,

Porta Br. Cur. *Item*, to the Clerk for any writ, or other Record carried into the Court, 4 d.

Bre. de Ingr. & ſeiſina. *Item*, for entring a Common Recovery-writ, *ſuper diſſeiſinam in le poſt*, 8 d.

Fiens. *Item*, for every time paſſing in the Office, 14 d.

Ne recipiatur. *Item*, for entring into a Book every *Ne recipiatur*, coming under a Judges hand, or by order of Court, 12 d.

Nota Jur. *Item*, for every Note of Jurors names for the Clerk of the Juries to make further Proceſs by, 4 d.

Copia Exig. *Item*, for every Note of an *Exigent*, for the Clerk of the Outlawries to make further Proceſs by, 8 d.

Searches. *Item*, for the ſearch of any Book of Entries of any writs for every Term, 8 d.

Copies. *Item*, for the Copie of any writ, or other Record, for every ſheet, 8 d.

The

The usual Fees allowed by the Custos Brevium, *to the Bag-bearer of the Office, being always the common Voucher of the Court.*

IN primis, for every search under five years, 1 d. *Searches.*
Item, for every Temple search, 1 d.
For every *Westminster* search, 2 d.
For any writ or other Record carried into the Court, 5 d. *Porta. Brev. &c. Cur. Recuper.*
For every common Recovery suffered in Court (being the common Vouchee) 4 d. apiece, 4 d.
For every Attorney sworn in Court, 6 d. *Attorn. Jur.*

The Fees of the Clerk of the Inrolments of Warrants and Estreats in the Common Pleas, as are now, and have been taken these two and thirty years, and, as I conceive, were taken ever since 31 Ediz. *saving the Fees hereafter mentioned, allowed per Ordin. Cur.*

EVery Inrolment containing a side of a Roll, 5 s. *Inrolments.*
For a full Roll, 10 s.
And so according to the Rate.
Every Warrant of Attorney in Debt, Transgr. and Detinue, 4 d. *Warr. Attorn.*
The Sheriffs Warrants, 12 d.
Every other Warrant, called Double Warrants, 8 d.
For a *Post-Term*, 4 d.
The L. Mayor of *London* his Warrant, 5 s. 8 d.
The Secondaries of the Compters in *Easter*-Term yearly, 13 s. 4 d.
For entring of an Attorney's Name in the Roll of Attorneys, upon his first admittance, 3 s. 4 d. *War. Jur.*
For a Warrant upon a writ of Covenant, *per Ordin. Cur.* *War. sur Fin.*
Paid to the Clerk by every Attorney, 4 d. a Term, called the Roll Groat, which is paid to the Judges *Rott. Attorn.*

Judges Box, and I conceive it to be due ever since 11 *Eliz.* 4 d.

Recuperat. Paid also to the Clerk by the Prothonotaries, 12 d.

Item, on every Recovery, which is also paid to the Judges, 12 d.

Attorn. Jur: To the Clerk, when an Attorney is first sworn, 12 d.

The Chirographers Fees.

Fines. IN primis, the ancient Fee limited by the Stat. 11 *Eliz.* for every Fine, 4 s.

Item, from 4 *H.* 7. for the service in proclaiming Fines, 8 d.

Item, by Stat. 23 *Eliz.* for writing the Roll, 4 d.

So the Chirographers fee for every Fine is, 5 s.

Other Fees also due, and anciently paid to the Chirographers, viz.

Exemplificat. FOr exemplifying a Fine the Term in which it was ingrossed, 2 s. 8 d.

Copy. For every sheet of every Fine of twelve lines copied out of the Record, 12 d.

For the sight of every Record, being ancient from *H.* 8. upwards, 3 s. 4 d.

Searches. For the search of every Fine from *H.* 8. to this present, for every year, 8 d.

For the search of every Fine during the Reign of *H.* 8. for every year, 12 d.

Certiorari: For certifying of every Record by a writ of Error. 12 s.

Quid jur. cla. &c. For a *Quid juris clamat*, *Quem redditum*, & *Per quæ servit*. 6 s.

Claims. For entring a Claim upon a Record, 5 s.

Post Fines. For allowing of Proclamations upon Fines brought into the Office after the Term ended, 6 d.

Post Term. For the *Post Termin.* of a Fine, 20 d.

The

The Chirographer's Clerks Fee for ingrossing of Fees by the Attorney which sues them out.

THe Chirographer's Clerks have received an allowance of the Attorneys for their pains for them, which heretofore hath been more advantagious unto them than now it is, being reduced to 2 *s.* 6 *d.* in certain had and made at the request of an hundred or eighty of the most ancient Attorneys, with *John Brewer* Esquire, Clerk of the said Office, in second or third of K. *James*. To which agreement had and made in writing, the said Attorneys set their hands, and the same was delivered to Sir *Edward Cook* Knight, then Chief Justice of the Common Pleas, and hath so continued ever since, until 20 years last past, 2 s. 6 d. *Fines ingross.*

For this allowance the Clerks do write more than all the Officers through which Fines do pass, *viz.* They write every Fine, long or short, four times over in a great set hand.

Therefore it was agreed to give 3 *s.* 6 *d.* for each Fine with one warranty, and for every warrant more 6 *d.* which hath been paid accordingly.

Fees belonging to the Clerks of the Treasury.

FOr the Copy of every Issue and Imparlance, for every sheet, 4 d. *Copy.*

For every Judgment, Deed inrolled, and real Action, for every sheet, 8 d.

For the search of every Term above ten years, 4 d. *Searches.*

For every Exemplification, not exceeding three sheets, 7 s. *Exemplificat.*

For every sheet more, 12 d.

For every Record of *Nisi prius*, not exceeding three sheets, 2 s. *Records of* Nisi prius.

For every sheet more, 4 d.

Judges Box, and I conceive it to be due ever since 11 *Eliz.* 4 d.

Recuperat. Paid also to the Clerk by the Prothonotaries, 12 d.

[illegible]on every Recovery, which is also paid to the Judges, 12 d.

Attorn. Jur. To the Clerk, when an Attorney is first sworn, 12 d.

The Chirographers Fees.

Fines. IN primis, the ancient Fee limited by the Stat. 11 *Eliz.* for every Fine, 4 s.

Item, from 4 *H.* 7. for the service in proclaiming Fines, 8 d.

Item, by Stat. 23 *Eliz.* for writing the Roll, 4 d.

So the Chirographers fee for every Fine is, 5 s.

Other Fees also due, and anciently paid to the Chirographers, viz.

Exemplificat. FOr exemplifying a Fine the Term in which it was ingrossed, 2 s. 8 d.

Copy. For every sheet of every Fine of twelve lines copied out of the Record, 12 d.

For the sight of every Record, being ancient from *H.* 8. upwards, 3 s. 4 d.

Searches. For the search of every Fine from *H.* 8. to this present, for every year, 8 d.

For the search of every Fine during the Reign of *H.* 8. for every year, 12 d.

Certiorari. For certifying of every Record by a writ of Error. 12 s.

Quid jur. cla. &c. For a *Quid juris clamat*, *Quem redditum*, & *Per quæ servit.* 6 s.

Claims. For entring a Claim upon a Record, 5 s.

Post Fines. For allowing of Proclamations upon Fines brought into the Office after the Term ended, 6 d.

Post Term. For the *Post Termin.* of a Fine, 20 d.

The

The Chirographer's Clerks Fee for ingrossing of Fees by the Attorney which sues them out.

THe Chirographer's Clerks have received an allowance of the Attorneys for their pains for them, which heretofore hath been more advantagious unto them than now it is, being reduced to 2 *s.* 6 *d.* in certain had and made at the request of an hundred or eighty of the most ancient Attorneys, with *John Brewer* Esquire, Clerk of the said Office, in second or third of K. *James*. To which agreement had and made in writing, the said Attorneys set their hands, and the same was delivered to Sir *Edward Cook* Knight, then Chief Justice of the Common Pleas, and hath so continued ever since, until 20 years last past, 2 s. 6 d. *Fines ingross.*

For this allowance the Clerks do write more than all the Officers through which Fines do pass, *viz.* They write every Fine, long or short, four times over in a great set hand.

Therefore it was agreed to give 3 *s.* 6 *d.* for each Fine with one warranty, and for every warrant more 6 *d.* which hath been paid accordingly.

Fees belonging to the Clerks of the Treasury.

FOr the Copy of every Issue and Imparlance, for every sheet, 4 d. *Copy.*

For every Judgment, Deed inrolled, and real Action, for every sheet, 8 d.

For the search of every Term above ten years, 4 d. *Searches.*

For every Exemplification, not exceeding three sheets, 7 s. *Exemplificat.*

For every sheet more, 12 d.

For every Record of *Nisi prius*, not exceeding three sheets, 2 s. *Records of* Nisi prius.

For every sheet more, 4 d.

Fees for the Keepers of the Treasury, from 12 Eliz.

Searches. IN*primis*, for search of a Term above ten years, 8 d.

For seven year, and under ten years, 4 d.

Portland Rot. For three years, 4 d.

Ligand. Rot. For search of a Plea-roll, 4 d.

For the Roll carried into the Court, 6 d.

For making up a Term and Record, 3 s.

Attorn. jur. For every Attorney sworn in Court, 21 s.

Jur. at Bar. For a Jury at Bar, 5 s.

Nisi prius Mid. For a *Nisi Prius* in *Middx.* 2 s.

Wager de Leg. For a Wager in Law, 5 d.

For a Copy of a *Precipe*, after the Term, 18 d.

Copy per Fines. For a Fine acknowledged in the Treasury, 4 d.

For a Warrant of Attorney left un-entred, and comes to be entred in the Roll after Term, 4 d.

Intrat. Term. For an Entry left out of the Kings Silver, and comes to be entred in the Office, 4 d.

Feod. annuale. From the Clerk of the Treasury for my attendance every Term, 5 s.

Claves Thes. For my Key after the Term, 18 d.

The Fees of the Clerk of the Kings Silver, as they were taken in the eleventh year of Q. Elizabeth, *in the sixteenth year of King* James, *and in the late Kings time, and since.*

Fines in the Western Circ. IN*primis*, for the Fees of every ordinary Fine taken by the L. Chief Justice of the Common Pleas, or any Judge of Assize in the Western Circuit, together with the Copy, or *Post Fine*, 18 d.

Fines by special Com. For every Fine taken in the same Circuit by special Commission, and for the Copy of the *Post Fine*, 22 d.

For every ordinary Fine elsewhere in *England*, and *Monmouthshire*, taken as aforesaid without Com-

Commission, and for the Copy, 10 d.

For every Fine taken by special commission out of the Western Circuit, and for the copy, 14 d. *Western Circ.*

For every several Caption in any Fine where it is taken at several times by special commission, over and above the former Rates, 4 d. *Several captions.*

For every Fine certified by *Certiorari* after the death of any Judge, or other Commissioners, over and above the former rates, 6 d. *Certiorari.*

For the *Post Termin.* of every Fine brought in the next Vacation after return of the writ of Covenant, 6 d. *Post Term.*

For every search of any Fine every Term, 4 d. *Searches.*

For every Copy of the Entry of the Kings Silver, 8 d. *Copia.*

For every fee of a *Ne recipiatur* of any Fine, either by order or warrant of the Court, or any Judge, 3 s. 4 d. *Ne recipiatur.*

For the continuing of any such order or warrant from Term to Term, till it be dissolved, 3 s. 4 d.

The Philizers *Fee.*

IN primis, for every *Cap. Alias* and *Plur. Cap.* in *Debt, Detinue* and *Trespass*, not having more than four Names in a Writ and Entry thereof, 6 d. *Cap. Al. & Plur.*

Item, for delivery of every first *Cap.* upon Record and Entry thereof, 4 d. *Delivery of Record of the Cap.*

For every *Testat.* upon any of the said Writs, *Pone in Replevin & Summons*, 12 d. *Testat. Pone, Samm.*

Item, for every *Cap. Al. & Plur.* in Account, Covenant, Annuity, *Ejectione firmæ*, and upon a penal Statute, 12 d. *Brev. in comp.*

Item, for every Writ in an Action upon the Case, or more, according to the length, 12 d. *Actiones super casum.*

For every Return, *Habend.* and second Deliverance, and Entry thereof, 2 s. 6 d. *Ret. habend.*

Non omit. Withernam. Partit. Waste. Quare Imp. &c. Inqu. de dam. Scire fac. Superf. Gr. & pet. Cap.

For every *Non omit.* and *Cap.* in *Withernam*, 2 s.

For every writ of Partition, *Warrantia Chartæ*, *Quare Impedit*, and Waste, 12 d.

For every writ of Inquiry of Damages in real Actions, *Scire facias & Superfedeas*, 2 s.

For every *Grand Cap.* *Al. Sum.* *pet. Cap.* and Entry thereof, 2 s. 6 d.

Copia inde.

For the copy of the Entry thereof, 8 d.

View.

For the Demand in every writ of View, and Entry thereof, 2 s. 6 d.

Seisin.

For every writ of Seisin, and Entry thereof, 4 s. 6 d.

For the View Prayer, 2 s.

For a copy of the Entry thereof, 8 d.

Habeas Corp. & Distring.

For every writ of *Habeas Corpus*, *Duces tecum*, *Distring. nuper Vicecom. & Distring. Ballivum*, 2 s.

cont. resort Rescous.

For every writ of Rescous and Entry thereof, 2 s.

Adjornment:

For the Entry of every Adjournment, Discontinuance, and resort, 4 d.

For every special Bail, and the Entry thereof, 2 s. 10 d.

Apparance.

For every apparance in real and mixt Actions, 4 d.

For every apparance upon Writs to arrest, and Entry thereof, 12 d.

Searches, Rules, Copies, Number-roll,.

For Searches, Copies, Number-Rolls, and giving of Rules, each of them, 4 d

Exigenters Fees.

Feod. Exigenters.

EVer since the Statute of *H.* 8. which gave the Proclamation upon the *Exigent*, the whole Estate of the *Exigenters* Office did consist in making of three Writs, *viz.* an *Exigent*, a *Superfedeas*, and a *Proclamation*, all which Writs are warranted by one and the same Record.

For all the time of our remembrance and experience

perience in the said Court, which hath been (by the most ancient of us) for above thirty years or thereabouts, the fees of the said Writs were as follow:

The *Superſedeas*, 2 *s.*
The *Exigent*, 11 *d.*
The *Proclamation*, 6 *d.*

Which fee of 6 *d.* was given by the Statute of 6 *H.* 8. being now about a hundred and ten years since.

About eight or nine years since, the *Superſedeas* (*quia improvide*) being the least Writ in labour, and more in profit than both the other, was granted by Letters Patents under the great Seal of *England*, by the late King of famous memory, to Mr. *John Murray*, then of his Majesties Bed-Chamber; and partly to avoid contestation with his said Majestie's grant, and upon hopes of some recompence other way, the *Exigenters* did give way to the said Patent, and have ever since lost the benefit of the *Superſedeas*; whereupon the Judges did give increase only of one peny to be taken upon the *Exigent*, for the relief of the *Exigenters*, and their Clerks, and so the *Exigent* was made 12 pence; which increase of a peny, is all the recompence which hitherto they have received for that great loss of the *Superſedeas*.

We have likewise heard, that above forty years since, and before our times, by occasion of an Act of Parliament, made 31 *Eliz.* whereby the Proclamation of the *Exigent* was much enlarged, without any addition or increase of fee, there was one peny added to the *Exigent*, to be given to the poor Clerks for writing the said Writs, over and above the ancient allowance; which peny hath ever since been paid to the said poor

Clerks accordingly, without any benefit to the Masters themselves.

Other increase, addition, or alteration of fees in our Office, we know not of, nor never heard of, although the length of the said *Exigent*, or Proclamation, with their Entries, considering the loss of the *Supersedeas* (all which we humbly submit to his Majesties Commissioners) might perhaps have justly deserved some further improvement. And it is certainly true, that no other increase of fees hath been in our Offices since 31 *Eliz.* nor for ought we ever heard, or can by any means conjecture for these hundred years at the least.

Hilar. Tertio CAROLI Regis.

The Chief Clerks of the Jurors.

A Note of all such Fees as are now usually taken by the Clerks of the Jurors of his Majesties Court of Common Pleas at Westminster, *being the same and no other than such as have been taken time out of mind.*

Habeas Corp. IN primis, for a Writ of *Habeas Corpora Jurator.* in debt and Trespass, 10 d.

For the like Writ in all other Actions, 16 d.

Distring. For a *Distringas cum decem Tales*, 2 s. 4 d.

Search. Copy. Court adjorn. For Terms search, the Copy of a Jury, a Number-Roll, and a Discontinuance and Adjournment for every of them, 4 d.

The Clerk of the Essoyns.

Essoin & Exc. IN primis, for every Essoyn and Exception, 4 d.

For the Copy, 4 d.

For every Adjournment, 4 d.

Copia. For the Copy, 2 d.

Idem dies. For every *Idem dies*, 4 d.

Adjornment. For every *Nonsuit* for want of Adjournment in Actions personal, 12 s. 4 d.

For

For the Copy, 12 d. *Copies.*

For the Exemplification of every Eſſoyn and Nonſuit thereupon, when it ſhall happen, being very ſeldom, 7 s. 6 d. *Non proſ. Exemplificat.*

For the Copy thereof, 3 s. 4 d.

For the Clerk, 12 d.

For ſeveral fees from ſeveral Officers of the Court towards the numbring and marking of the Rolls, 4 l. 9 s. *Feod. annuali.*

Outlawry Office.

In the Kings Attorney General his Office of Outlawries, executed by his Deputy Mr. Johnſon, *the Fees are as follow,* viz.

FOr a ſpecial *Capias Utlagat.* againſt Body, Lands, and Goods, 2 s. 4 d. *Cap. utl. ſpecial.*

For a *Proprium,* 14 d.

For every Writ of *Hab. Corpus, & Duces tecum,* when they are ſued forth, 2 s. 4 d. *Habeas Corpi duces tecum.*

If a *Propr.* 14 d.

For a general *Cap. Utlagat,* 10 d. *Cap. utl. general.*

If a *Propr.* 6 d.

For engroſſing and certifying a ſpecial Writ, with the Inquiſition returned by the Sheriff, of Lands, or Goods found thereupon, and for the *Exigent,* with the return thereof at large certified into the Exchequer, when it is required, the Office fee is 8 ſhillings, unleſs it be commanded by the Lord Treaſurer, Chancellor, or Barons of the Exchequer, or by the Kings Attorney-General, or Solicitor, for his Majeſties Service only, then no fees are due, 8 s. *aut nil.* *Certif. nil in lib.*

For ingroſſing and certifying a Reverſal into the Exchequer, to diſcharge ſeiſure upon Outlawries, when any is, 5 s. *Certif. Reverſal. in Scaccar.*

And to the Clerk, 4 d.

Exon. l. de utl. For entring the Reversal in the Outlawry Office to discharge all process thereupon, or upon any writ of Error, 2 s. 8 d.

Certific. utl. vel Reversal. For certifying of an Outlawry, or Reversal when it is pleaded, 2 s.

And to the Clerk, 4 d.

Search. For the search of an Outlawry one Term (as in all other Offices,) 4 d.

If above a year, then 3 *d.* a Term is the utmost, 3 d.

Filat. Exig. For entring and filing an *Exigent*, with one process thereupon, 4 d.

These several Fees aforesaid, were paid and received in Easter *Term*, 34 Eliz. *and ever since, to my own knowledge; for so long I have been and continued Clerk, and to all Attorney Generals that have been since that time.*

These (as I understand) are the true Fees.

The Fees of the Seal for Writs.

Seal of Writs. ALL Writs for the Kings Bench, and Common Pleas, 7 d.

Exemplificat. The Exemplificat. of the Kings Bench, 2 s. 6 d.

The Exemplification of the Common Pleas, 2 s. 6 d.

Outlawry, 1 d.

Proer. 1 d.

Fees due to the Marshal and Proclamator of the Court of Common Pleas, given by Order made by all the Judges of the Court, Term. Trin. 31 H. 1. post Conquestum, *and received accordingly by the said Marshal and Proclamator, for anything appeareth to the contrary, until* 11 Eliz. *and ever since.*

Judgments. IN primis, for every Judgment and Nonsuit, 4 d.

Item, for every fine, 8 d.

Item, for every final Judgment, 12 d.

Chief

Chief Usher of the Exchequer, and Marshal, and Proclamator of the said Court of Common Pleas, by Lease from *Clement Walker* Esquire, who hath the same Office in inheritance by Grand Serjeanty.

The four Cryers.

HEreafter do ensue the good Ordinances and Rules made as well by the Kings Justices of the Common Pleas in times past, as by the Justices now being, for the good Rule and Order of the said Court; which same now Justices do charge and command every of the said Officers and Attorneys well and truly to observe and keep upon the pains therein limited.

Which said Orders were inrolled *Term. Trin.* 35 *H.* 1. *Post Conquestum*, *Rot.* 494. *Jo. Priest* Chief Justice of the Common Pleas, *Ni. Austen*, *Pet. Arder*, *Ro. Davers*, *Ro. Dawby*, *Wa. Moil*, and *John Needham*, Justices of the same Court.

The Cryers Fees from 11 Eliz.

FOr every Judgment, 4 d. *Judgments.*
For every final Judgment, 12 d.
For every Nonsuit, 4 d.
For every fine, 8 d. *Fines.*
For every Recovery, 8 d. *Recoveries.*
For calling a Jury, if they fill not, 2 s. *Juries.*
For every Jury, if they fill, and serve, and give up their Verdict the same day at the Bar, and for keeping them till then, 6 s.
If the Jury lie all night, that we be forced to watch and wait on them all night, 30 s.
For carrying every Bundle of Records out of the Treasury into the Court, and back again into the Treasury, 6 d. *Carrying Rolls.*
For every Attorney that is sworn, 6 d. *Attorn. jur.*
For every Bail, 12 d. *Bails.*

For

Oaths. For every Oath in Court, 12 d.

Wager of Law. For every Wager of Law, old fees, 4 s. 4 d.

Sciri facias. For every *Sciri facias* called in Court, 4 d.

Nisi prius. For every *Nisi prius* before My Lord Chief Justice, 4 s.

Guardians. For every admittance to a Guardian, 12 d.

The Fees of the Keeper of the Court from 11 Eliz.

Feod. annuale. FRom the Clerk of the Treasury, for hanging the Cloth of the Court, 6 s. 8 d.

Wager of Law. For a wager of Law, and Wager-men, 9 s. 6 d.

For a Jury at Bar, 5 s.

Attorn. jur. For every Attorney sworn in Court, 12 d.

Nisi prius. For a *Nisi prius* in *Midd.* 2 s.

Bails. For a Bail, 4 d.

Fines. For a Fine, 4 d.

Deeds acknow. For a Deed acknowledged.

Satisfaction. For Satisfaction acknowledged.

The Fees of the Clerk of the Inrolment of Fines and Recoveries.

Of Fines and Recoveries in gross. IN *primis*, The fee due to the Judges by the Statute of 23 *Eliz.* for inrolling of every fine and Recovery, 6 s. 8 d.

Exemplificat. *Item*, due to the Judges by the same Statute for exemplifying every Inrolment, 5 s.

Searches. For search of every fine inrolled for every year, 16 d.

Copies. For copying every fine inrolled, for every sheet, 12 d.

Inrolments. For the Clerks fee for inrolling by the Roll,

Exemplificat. For Exemplifying after the same rate, 8 s. 4 d.

Rules for Amendments. For every Rule upon Amendments, 3 s. 4 d.

Writ of Entry, Covenant, Seisins, &c. For returning Writs of Covenants upon Fines, and Writs of Entry, Summons, and Seisins upon common Recoveries, as Deputy of Record for Sheriffs appointed by the Court, the fee is, 1 s. 6 d.

The

The Porter of the Court his Fees from 11 Eliz.

For every Writ of Entry with Mr. Attorney General, 4 d. *Writs of Entry.*
For a Jury at Bar, 5 s. *Juries at Bar.*
For a *Nisi prius*, 2 s. *Nisi prius.*
For a Wager of Law, 6 d. *Wager of Law.*
For a Fine acknowledged, 4 d. *Fines.*
For a Bail, 4 d. *Bails.*
For Satisfaction acknowledged, 2 d. *Satisfaction.*
For every Attorney sworn, 12 d. *Attorn. sworn.*
For a Guardian, 4 d. *Guardian.*

Alienation Office.

Thomas Ravenscroft, *Francis Poulton*, *George Coultrop*, Esq; Commissioners.
Thomas Bond Esq; Receiver.

Takes no fees, but receive a certain stipend from the King.

Fees taken by the Master of the Chancery, for that Office appointed.

For signing every Docquet upon license and pardon of Alienation, 2 s. *Docquet.*
For every writ of Entry for Lands holden in chief, 2 s. *Pr. writs.*
For Writs of Entry of Lands not holden in chief, 4 d.
For *Affidavits* upon discharge of Tenures, 2 d. *Affidavits.*

The usual Fees taken in the Office of Compositions for Alienations, by the Clerks there.

For a Certificate upon a writ of Entry, 3 s. 4 d. *Certificate.*
For the Warrant to the Great Seal for pardon of Alienation, 10 s. *Pardon.*
For viewing the Subjects Evidences, search of the Tenures, and drawing of the *Affidavit* with Process, to be discharged, 6 s. 8 d. *Discharge of Process.*

For

Releases. For a Releaſe in nature of a pardon of Alienation upon a common Recovery, and for the like Releaſe upon a ſpecial Livery, and alſo for a Releaſe upon a general Pardon at the Coronation, or other times, for each of them, 1 l. 3 s. 4 d.

Diſcharge of Seizure. For a Note of a Sheriffs Diſcharge upon a Seiſure, 3 s. 4 d.

For every Exo. and for certifying thereof into the Exchequer, 12 d.

Acquittances. For the Sheriffs acquittance, 6 s. 8 d.

Entry of Writs. For entring in a large Book every writ of Covenant finable, *viz.* in the Term-time, 6 d.

And in the Vacation, 12 d.

Licence of Alienation. For entring in another Book remaining in the ſaid Office every Docquet upon a Licence of Alienation in the Term-time, 12 d.

And in the Vacation, 2 s.

Pardon. For every Docquet for a pardon of Alienation in Proceſs of *Diſtringas*, or *Scire facias*.

Ent. of Lands holden in Capite. For every writ of Entry of Lands holden in *Capite*, and entred in the ſame Book, 6 d.

And in the Vacation, 12 d.

Indorſing Bre. Intr. Bre. For indorſing every writ of Entry, 6 d.

For indorſing every writ of Covenant in Term, 4 d.

In the Vacation, 6 d.

For entring unfiled Writs, 6 d.

Diſcharge of Tenures. For drawing the Diſcharges of Tenures in Parliament, and entring them, 3 s.

The Under-Sheriff of Middleſex *taketh theſe Fees following in his Majeſties Court of the* Common Pleas.

Warrant. FOr a Warrant upon a *Capias* for every Name, 4 d.

Return Venire facias. For return of a *Venire facias*, 2 s.

For a warrant upon a *Capias Utlagat.* 4 d.

For

For the return of a *Habeas corpora Juratorum*, 4 d. *Return Habeas corpus.*

For ſummoning the Jury for every Name, 4 d. *Sum. Jur.*

For a *Cepi corpus* for every Name, 4 d. *Cepi Corpus.*

For the return of an *Exigent* for every Name, 4 d. *Return Exig.*

For return of a Proclamation, 12 d. *Return Procl.*

For the return of a *Scire facias*, *Scire feci*, 2 s. *Scire facias.*

For the return of a *Nihil habet* on a *Scire facias*, 12 d.

The Warden of the *Fleet* his Fees.

A Note of the Fees due and belonging to the Warden *of the* Fleet, *and Under-Officers, as appeareth by a Commiſſion under the Great Seal of* England, *from the late Q.* Elizabeth, *in the third year of her Reign, and confirmed in the ſeven and thirtieth year of her Reign, what every ſeveral Priſoner in their ſeveral degrees ought to pay.*

Commitments. AN Archbiſhop, a Duke, a Dutcheſs, are to pay for their Commitment fee to the ſaid Warden and his Officers, having the firſt weeks diet with Wine, 21 l. 10 s.

Alſo they are to pay for their ordinary weekly diet with wine, 3 l. 6 s. 8 d.

Commitments. A Marqueſs, a Marchioneſs, an Earl, a Counteſs, a Viſcount, Viſcounteſs, are to pay for their Commitment-fee to the ſaid Warden and his Officers, having the firſt weeks diet with wine, 14 l. 11 s.

Alſo they are to pay for their ordinary weekly diet with wine, 2 l.

A Lord Spiritual or Temporal, a Lady the wife of a Baron, or Lord, are to pay for their Commitment-fee as abovelaid, having the firſt weeks diet with wine. 11 l. 4 s. 10 d.

Alſo

Also they are to pay for their ordinary weekly commons with Wine, 1 l. 6 s. 8 d.

A Knight, a Lady the wife of a Knight, a Doctor of Divinity, a Doctor of Law, or others of like calling, are to pay as aforesaid for their Commitment-fee, having the first weeks diet with VVine, 5 l.

Also they are to pay for their ordinary weekly commons with VVine, 18 s. 6 d.

Commitments. An Esquire, a Gentleman, a Gentlewoman that shall sit at the Parlor Commons, or any person under that degree, that shall be at the same Commons, are to pay for their Commitment-fee as aforesaid, having the first weeks diet with VVine, 3 l. 6 s. 8 d.

Also they are to pay for their ordinary weekly commons with Wine, 10 s.

A Yeoman, or any other that shall be at the Hall-Commons, man or woman; are to pay for their Commitment-fee, having their first weeks diet, 33 s. 4 d.

Also they are to pay for their ordinary weekly Commons, 5 s.

A poor man in the VVard, that hath part of the Box, is to pay for his Commitment-fee, having no diet, 7 s. 4 d.

Licence to go abroad. Also there is due to the said VVarden 20 *d. per diem* for the whole day, and 10 *d.* for every man that he may lawfully give licence to go abroad.

Return of Writs. Moreover the said VVarden hath for return of VVrits as the Sheriffs and Bayliffs of Liberties have, by which he hath allowance for return of every *Habeas Corpus*, or Attachment. 2 s. 4 d.

Also for every *Habeas Corpus cum causa*, there are fees for returning the causes, *viz.*

For allowing the VVrit, 2 s. 4 d.

For

For returning the first cause, 2 s. 4 d.
For execution, 2 s.
For every Action, 12 d.

VVhich are due to the VVardens Clerk, and five shillings to the VVardens Servants, for bringing every Prisoner safe to the Bar. *Bringing a Prisoner to the Bar.*

Also he hath allowance of every *Supersedeas* and Discharge, 2 s. 4 d. *Allowance of Supersedeas.*

Also when a man is committed by order out of the Court of Chancery, Court of Exchequer, Court of Requests, and Courts of Dutchy, the VVardens Servants (being sent to apprehend them and bring them to the *Fleet*, according to the tenor of their commitment) have 4 *d.* the mile where they are apprehended, and 6 *d.* the mile back again, and the Clerk hath 2 *s.* for making the VVrit. *Travel charges for apprehending parties committed.*

A TABLE of the due Fees of the *Prothonotaries* Court in the Common-Pleas.

These are the Fees due and belonging to the three Prothonotaries *of the Court of Common Pleas at* VVestminster, *for Entries of Declarations, Pleas, and Judgments; And also for the making and entring of Writs in their several Offices, and for other dues belonging to them, confirmed and allowed by the late King, by his Letters-Patents under the Great Seal of* England, *dated at* Canbury *the* 22 *of* July, *in the twelfth year of His Reign, and are mentioned and expressed in a Schedule of Fees to the said Letters annexed, and recorded in His Majesties Court of Common Pleas at* VVestminster, *in the Term of St.* Michael *next following*, Rot. quinto, sexto, septimo, octavo, nono.

IN primis, For the entry of every common Declaration, common Plea in Bar, wherein no *Common Declaration and Pleas.*

Free

Free-hold is pleaded, common Replication, and Rejoynder in Actions perſonal, 12 d.

Special Narr. in Actions perſonal. For the entry of every ſpecial Declaration, ſpecial Plea in Bar, or Abatement, Freehold, Replication, or Rejoynder, and Pleas ſubſequent, in ſheets, every ſheet containing 12 lines at the leaſt, and every line containing ten words, 2 s.

And for every ſheet exceeding, 8 d.

Special Narr. in ſpecial Actions. For every Declaration in Actions upon the Caſe, *Ejectione firmæ*, Accompt, Annuity, Conſpiracy, Covin, Deceit, Partition, *Plegios acquietandis*, and Debt upon Statute, Plaint in Aſſize, and the like ſpecial Actions, real, mixt, and popular Actions, if the Declaration, or Plaint, exceed not three ſheets, 2 s.

And for every ſheet exceeding, 8 d.

Bar in ſpecial Actions. For the entring of every bar, replication, and Pleas ſubſequent in every of the Actions laſt above recited, and in the like Actions not exceeding three ſheets, 2 s.

And for every ſheet ſo exceeding, 8 d.

Oyer de faits. For the Oyer of every bill, obligation, indenture, record, or certificate, or the like, entred in *hæc verba*, not exceeding the length of three ſheets, 2 s.

And for every ſheet above that length, 8 d.

Appearance. For recording every Appearance by the Court, 2 s. 4 d.

Recognizance. For the entry of every Recognizance without condition, challenge to the Sheriff, or Coroners, or to the Array, or other ſpecial Averments, 2 s.

And for the entry of every Recognizance, with a condition, 4 s.

Judgment. For every Judgment in Debt, Treſpaſs, or Detinue, without a *Tales* for the Prothonotary, 2 s.

Adjournment. And for entring every Adjournment, 4 d.

For

For every Judgment with a Tales, beſides the fee above recited, 2 s. *Judgment.*

For every *Remanet*, and Judgment, or coſts given to the Defendent by the Statute, beſides the Fee aboveſaid, 2 s. *Remanets.*

For every Judgment in all other Actions, as well perſonal as mixt and real, and prohibitions, and the like, 4 s. *Judgments.*

For every ſatisfaction, *Recordatur*, Diſcontinuance, *Retraxit*, Relinquiſhment, *Nolle proſequi*, or the like, in Actions perſonal, 2 s. *Satisfaction. Recordatur. Diſ. retraxit. Nolle proſequi.*

And in real Actions, 4 s.

For the entry of every *Mittimus & Dedimus poteſtatem*, for a common Recovery, 6 s. *Recoveries.*

For the entrance of a Summons *ad Warr.* for a common Recovery, and the Writ of Summons *ad Warr.* 4 s. 6 d.

For the entry of a *Certiorari* to certifie a Warrant of Attorney for the Tenant or Voucher, 4 s.

And if for both, 6 s.

For every Foreign Voucher ſent to the Common-Pleas to ſummon the Vouchee, if the Record be not above three ſheets, 2 s. *Foreign Vouchers.*

And for every ſheet more, 8 d.

The like Fees are to be paid when the Record is remitted back again, after the Voucher determined, 2 s. 8 d.

For the entry of every ſpecial Verdict whereupon a *Cur. adviſar. vult.* is entred, being not above the length of three ſheets, written as aforeſaid, 2 s. *Special Verd.*

And for every ſheet exceeding that length, 8 d.

For the entry of every general Verdict, with a *Cur. adviſar. vult.* without a Tales, 2 s. *General Verd.*

And with a Tales, 4 s.

For the entry of every *Remittitur* of Debt *Remittitur.*

or Damages, 12 d.

Information. For the Entry of every Information upon any penal Law, and ſigning the *Subpœna* only, 2 s. 8 d.

Prohibition. For the entring of every Surmiſe for a Prohibition to be granted, not exceeding the length of three ſheets, as aforeſaid, 2 s.

And for every ſheet above that length, 8 d.

Proof de ſugg. For the entry of the Oath of every Witneſs to prove the Surmiſe in a Prohibition, or *Audita querela* brought by an Infant, and the entry of the proofs *De morte & vita viri*, Dower, and the like Action and Suits. 2 s.

For the releaſing of any default in any real Action, 2 s.

And entring the recital of the *Grand Cape*, 4 s.

Exam. Recor. Rec. in County Palat. For examining every Record of *Niſi prius*, 12 d.

For making the Record for tryal of an Iſſue in any of the County Palatines, for the firſt three ſheets, 2 s.

And for every ſheet more after, 4 d.

Exemplificat. For the Exemplification of any Record, not exceeding ſix ſheets, 5 s.

And for every ſheet exceeding that rate, 8 d.

Seiz. in Dower. For entring of Seiſin in Dower, and dying ſeized, the return of the Seiſin, exceeding not above three Sheets, 4 s.

For every ſheet exceeding, 8 d.

Non ponen. in aſſiſ. Cog. de pleas. For entring the Writs of Exemption *de non ponend. injurat.* and Patents, *de libert. allocand.* and Protections, Recognizances of Pleas, and the like, according to the rate aboveſaid, if they exceed not three Sheets, 2 s.

And for every ſheet exceeding, 8 d.

Judgment per default in wa. Quare Impedit. For the entring the Default upon the Diſtreſs in Waſte, *Quare impedit*, and the like, and Judgment thereupon, if the Title or Count do not exceed

ceed three ſheets, 6 s. 4 d.

And if it be more than is aforeſaid, for every ſheet, 8 d.

For entring of a *Quo Warranto*, if it exceed not three ſheets, 2 s. *Quo Warran.*

For the entry of every Plea thereupon according to the ſame rate as before, 2 s. 8 d.

For the entry of a Plea of Account pleaded before Auditors, if it be not above three ſheets, written as aboveſaid, 2 s. *Account before Auditors.*

And if more, for every ſheet exceeding, 8 d.

For the entry of every Summons & Severance, and Aid prayer, 2 s. *Severances.*

For the admiſſion of an Infant to his *Prochein amy*, or Guardian, 2 s. *Ayd-prayer.*

And if it be by Commiſſion, 4 s.

For entring the Defendent's diſcharge upon a *Cap. pro fine*, and for a Contempt, 2 s. *Cap. pro fin.*

For the like upon Reſcous, returned and admitted to his Fine. 4 s.

For traverſing of a Reſcous, and Iſſue thereupon, 6 s.

For entring the allowance of every general and ſpecial Pardon of Outlawry before Judgment and after, 5 s. 4 d.

For entring of a *Dies dat'*, in Debt, Detinue, and Treſpaſs, 12 d.

And in all other Actions, 2 s.

For the entring of a Receipt of a Feme covert, Tenant in tail, Leſſee for years, or the like, 2 s.

And for the entry of the Plea, if it exceed not three ſheets, 2 s.

And for every ſheet exceeding, 8 d.

And if the Receipt be by Writ, then more for entring of the Writ, 2 s.

For the entring of Aſſize delivered in the

Common-Pleas by Justices of Assize to be inrolled, for every sheet, 12 d.

And if the Assizes come into the Common-Pleas by *Certiorari*, then more for entring the *Certiorari*, 2 s.

Abridgement. For the entry of every Abridgement of the Demand in Dower, Assize, or the like, 2 s.

Pone. For the entry of every *Pone* to remove a Plea by Writ out of the County Court there holden by Justices, and for the return of the *Pone*, 4 s.

Mittimus. Rege inconsi. For the entring of any Record sent into the Common-Pleas by *Mittimus*, or otherwise; and likewise for the entry of every *Rege inconsulto*, or such like, if it exceeds not three sheets, 2 s.

For every sheet so exceeding, 8 d.

Certificate of Bastardy. For the entring of every Certificate of Bastardy certified by the Bishop, and the awarding of the writ, and Judgment thereupon, 6 s.

Journeys Account. For the entry of the Licence of the Court to purchase a new Writ by Journeys Accounts, 2 s.

Delivery of Record. For the entry of every Original Writ delivered of Record in real or mixt Actions, 2 s.

Challenge. For the entry of every sheet above 3 sheets, of every challenge to the Sheriff or Coroners, or to the Array, or other special Averments, or the like, 8 d.

Remanet. For the entry of every *Remanet* in real Actions, 4 s.

For the entry of every *Remittitur* in real and mixt Actions, 2 s.

Aid-prayer. For the entry of every sheet above three sheets, of Aid-Prayer, 8 d.

Admission to Guardians. For the entry of an admission of a Guardian, if it be by Commission, and *Mittimus*, 6 s.

Privy Seal. For the entry of a privy Seal, for every sheet, 8 d.

License. For the entry of the License of the Court to compound upon penal Statutes, 2 s. For

For the entry of every Warrant of Attorney made by the Tenants in common Recoveries, or the like, after their appearance at the Bar, 2 s. *Warrant of Attorney.*

For every Judgment by ſpecial Commiſſion of the Title in *Quare impedit*, or the like, if it exceed not three ſheets, 4 s. *Quare imped.*

And for every ſheet after, 8 d.

For the entry of every Special Imparlance, 2 s. *Special Imparlance.*

For the entry of every *Committitur* of a Priſoner by the Roll, being brought to the Bar by Writ, and every tender of the Body in diſcharge of the Bail, 4 s. *Committitur.*

But if it be without Writ, then in either caſe but 2 s.

For entring of every Demand of a Priſoner to appear and remand the ſaid Priſoner, 4 s. *Remand.*

For the entring of every Eſſoyn in the Plea-Rolls, as upon Wagers of Law, 12 d. *Eſſoyn.*

For the entry of Bail upon every Reverſal for inſufficiency of *Exigent*, or of the Retnrn, 2 s.

For the entry of every Declaration in Debt upon Demiſe, or the like ſpecial Declaration, if the Declaration exceed not three ſheets, 2 s. *Narr. ſur Demiſe.*

And if ſuch Declaration exceed the number of three ſheets, then for the entry of every ſuch ſheet, containing 12 lines, and every line 10 words, 8 d.

For the entry of every ſeveral count upon an Original in Debt, Detinue, Treſpaſs, and the like, 12 d. *Comm. Declar.*

For the entry of every ſeveral count in Actions upon the Caſe & Account, & the like upon ſeveral days, if the count exceed not three ſheets, 2 s. *Actions ſuper caſum. Account.*

And for every ſheet ſo exceeding 8 d.

For the entry of every ſpecial Condition or Indorſement of any Obligation entred in *hæc verba*, *Special Condition.*

not exceeding the length of three Sheets, 2 s.
And for every ſheet ſo exceeding, 8 d.

Common condition. But if the condition be in Debt for payment of Money, at one day, and under the length of two ſheets, then for the entring thereof, but 12 d.

Mittimus. Certiorari. For the entring of every *Mittimus*, or *Certiorari*, and Return thereof, 4 s.
But if the Return thereof exceed three ſheets, then for every ſheet ſo exceeding, 8 d.

Prohibition. For entring of the count in a Prohibition, and Pleadings thereupon after an Appearance of the Defendent, not exceeding the length of three ſheets, 2 s.
And for every ſheet above that length, 8 d.

Attaint, falſe Judgments. For the entry of every Writ of Attaint, or falſe Judgment, 2 s.
For the entry of the Return thereof, and the Aſſignment of Errors, or falſe Oaths, not exceeding three ſheets, 2 s.
And for every ſheet more. 8 d.

Proof in a Prohibition. Audita Quer. and Dower. For the entry of every ſheet above three ſheets of the Oath of every Witneſs, examined to prove the Surmiſe in a Prohibition, or *Audita Querela*, brought by an Infant, and the entry of the proofs *De morte & vita viri* in Dower, and the like Action and Suits, 8 d.

Fees for Writs. *Fees due to the* Prothonotaries *for Writs, and the Entries of them amongſt other dues.*

Prohibition. FOr every Writ of Prohibition, or Conſultation, not exceeding four ſheets, 2 s.
For every ſheet ſo exceeding, 4 d.

Withernam. Habeas corp. Summ. & al. Prev. ſpecial. For every *Withernam*, *Return*, *Habend.* after Appearance, ſecond deliverance, Writs of Priviledge, *Habeas corpus*, *Procedendo*, *Certiorari*, Summons and Reſummons, *Petit Cape*, *Venire facias*, *Scire facias*, *Elegit*, *Extent*, *Superſedeas*, *Subpœna*, Writ

Writ to the Bishop, Attachment in Ass. *Distring. Jur. Hab. Cor. & Distring. in Ass. & Attaint.* and the like, *Habere fac. possessionem*, Writs of View, *Mittimus*, *Identitat. nominis*, and every other special Writ, 2 s.

For the entring of every such Writ, which requireth an entry, not exceeding four sheets, 2 s. *Entr. of Writs.*

And if more, for every sheet as aboveſaid, 8 d.

For every *Ca. sa. & fi. fa. Distring. ad deliberand.* and Writs to enquire of Damages in Trespass and Replevin. 12 d. *Ca. fa. & fi. fa. Testat. distr. Inqu. in Tresp. Inqu. in casu.*

For writs to enquire of Damages in Covenant, Ejectment, Actions upon the Case, and the like, 2 s.

For every *Capias pro fine*, 6 d. *Cap. & Exig. pro fine.*

For the *Exigent* upon a *Capias pro fine*, 10 d. *Intra return. Brev.*

For the entry of the Return of every writ in the Prothonotarie's Roll, other than the *Ca. fa.* returned *non est invent.* and the *fi. fa.* returned *nulla habet bona*, whereupon further Process is awarded, not exceeding four sheets, 2 s.

And if more, then for every sheet, 8 d.

For the entring of every writ of Priviledge, or *Habeas corpus*, with the Bail for one cause, 6 s. *Bail sur Pri. Habeas corp. Committitur.*

And for every other cause, 2 s. *Reversal.*

For every Reversal upon an Outlawry, for Default of Proclamation, with one Name, and the Bail, or *Nolle prosequi*, 4 s. 4 d.

For every Name more, 2 s.

For every *Ca. fa. & fi. fa.* after a *Devastavit*, 2 s. *Ca. fa. & fi. fa. post Devast.*

Whereof by allowance from the *Prothonotaries* the Clerk hath had, 8 d.

For every sheet exceeding four sheets of writs to enquire of Damages in Covenant, Ejectment, Actions upon the Case, and the like Actions, 4 d. *Inqu. in casu, &c.*

For the writ of *Libertat.* or the like special *Libertat.*

Writs, 2 s.

Whereof by allowance from the *Prothonotary*, the Clerk hath had, 8 d.

Intra Brev. For the entry of every ſuch Writ, and the entry of every other ſpecial Writ, which requireth an entry, not exceeding four ſheets, 2 s.

And for every ſheet ſo exceeding, 4 d.

Diſtringas. For every *Diſtringas* in Detinue, 12 d.

Whereof the Clerk by allowance from the *Prothonotary* hath had, 4 d.

Inquir. in caſu, &c. For Writs to enquire of damages in Covenant, Ejectment, Actions upon the Caſe, and the like Actions, if they exceed not four ſheets, 2 s.

Whereof by allowance for the *Prothonotary* the Clerk hath had, 4 d.

Committitur. For the entry of every *Committitur* upon a *Habeas corpus una cum die & cauſa*, with one cauſe returned, beſides the entry of the Writ, 2 s.

And for the entry of the Writ, 2 s.

And for every other cauſe returned, 2 s.

Proceſs ſur Information. For the ſigning of all Proceſs upon Information, excepting the firſt *Subpœna*, 1 s. 4 d.

The Prothonotaries *Clerk's Fees.*

Copies. IN *primis*, for the Copies of common Declarations and Pleas, for every ſheet containing twelve lines, and every line ten words, 4 d.

For every ſheet in real and mixt Actions, and Actions upon any Statute, and the like, 8 d.

Draughts. For drawing of every ſpecial Declaration and Plea for every ſheet, 8 d.

Continuance, For every continuance every Term of every Writ, Iſſue, Imparlance, Demurrer of ſpecial Verdict, or Adjournment, 4 d.

Exemplificat. For exemplifying every Recovery with a ſingle Voucher, 4 s. 8 d.

For exemplifying of a double Voucher, 6 s.

And

And for every Voucher more, 12 d.

For exemplifying of any Record, not exceeding eight sheets, 5 s.

And for every sheet more, 6 d.

For drawing of every extraordinary long writ, after the rate of every sheet, 8 d. *Drawing of Writs, and Entries thereof.*

And for the entry thereof (if it so require) for every sheet, 4 d.

For the copy of a Judgment, for every sheet, 8 d. *Cop. of Judgm.*

For the entry of every Writ, and the Return thereof into the *Prothonotaries* Remembrances, for drawing up of a Judgment, if it exceed not three sheets, 6 d. *Entries in remembr.*

And for every sheet after, 4 d.

For entring of every common Rule into the Bill of Pleas, or common Remembrance, 4 d. *Rules.*

For the entring and ingrossing every Summons for a Recovery, and for the making of the Writ of Summons, 2 s. *Summons for Recoveries.*

For the entry of every *Mittimus*, and *Dedimus potestatem*, for a Recovery, 2 s. 6 d. *Mittimus.*

For the ingrossing of every *Nisi prius*, after the rate of every sheet, 4 d. *Ingros. Nisi pr.*

For the entry of every *Testat. sur casa. & fi. fa.* 4 d. *Intr. ca. sa. test.*

For the search in every Term in the *Prothonotaries* office, in the docquets or Remembrances, 4 d. *Searches.*

For issuing out of the Court-money, of the party receiving it, 1 d. in *l.* *Court-money.*

For the making of every long Writ, as Prohibition, and the like, for every sheet, 4 d. *Making long Writs.*

For the prosecuting and issuing out of Process for the King, for to bring in the Party for to make Fine for his contempt, until the Party render himself, or be outlawed, besides the Fees of the Court, 3 s. 4 d. *Cap. pro fine.*

For

Copy ſuggeſt. For the Copies of Suggeſtion to grant a Prohibition, for every ſheet, 8 d.

Tract. Prohib. Special Verd. For drawing of every Surmiſe to have a Prohibition, ſpecial Verdict, and the like, for every ſheet, 8 d.

The Prothonotarie's *Clerk's Fees for Informations only.*

Information. FOr ingroſſing of every Information, 8 d.

For a Copy of the ſaid Information, if it amount to the number of five ſheets of Paper, or upwards, 3 s. 4 d.

If it be under the number of five ſheets, then for every ſheet, 8 d.

For making of every *Capias pro fine*, upon an Information, 6 d.

For the entring of a general Iſſue upon the Roll, where the Information was firſt entred in the Term it was firſt exhibited, 8 d.

For the Regiſtring of every Licence to compound in the Office-Book, 4 d.

An ancient Fee due to the Second Prothonotarie's *Clerk only.*

Fines. FOr recording of every Fine acknowledged at the Bar by writ, and moved by a Serjeant, 4 d.

Secondarie's Fees. *Fees due to the Secondaries of the* Prothonotarie's *in their ſeveral Offices.*

Cop. of Rules Drawings and entr. of Rules. FOr the Copy of every common Rule. 4 d.

For taking a Note of the Rule of the Judges in Court, upon a motion of a Serjeant, for drawing the ſame Rule in Paper in Latin words, and entring it into the Bill of Pleas, and the Copy thereof, the draught not exceeding ſix lines in paper, 8 d.

If the Rule exceed ſix lines, then 12 d.

Wag. in Law. For every Wager in Law, in Court, or Nonſuit of the Plaintiff, upon a wager of Law, 12 d.

For

For the Entry of the *Committitur* of any Defendent to the *Fleet*, in execution of any Judgment, or otherwise in Court, and for making a Copy thereof for the Warden of the *Fleet* containing the cause of the Commitment. 12 d. *Committitur.*

For the Entry of every commitment to the *Fleet*, of any person yielding himself in discharge of his Bail, and for the like Copy, 12 d.

For attending the Judge from his Chamber to *Westminster*, to take a privy Verdict tryed at Bar, 3 s. 4 d. *Privy Verdict.*

For reading the Record of a Demurrer in Court, or Verdict, 12 d. *Read Record.*

For taking Bail in Court, 12 d. *Bails:*

For entring of an Admission of an Infant to his *Prochein Amy*, or Guardian in the Prothonotarie's Remembrance, 12 d. *Admission to Guardian.*

For the Copy of the Issue and Jurors Names, to be delivered to the Jury upon any Tryal at Bar, 12 d. *Copies of Issue and Jurors Names.*

For reading of Evidences upon Tryals at the Bar of each party, Plaintiff and Defendent, 3 s. 4 d. *Tryals at Bar.*

For entring of every Satisfaction by special warrant, *Recordatur*, and Discontinuance, 8 d. *Satisfaction. Record. disc.*

For every Satisfaction by general warrant, 4 d. *Satisfaction.*

For entry of every Will, or Letters of Administration, to enable an Executor or Administrator to acknowledge Satisfaction, and the Entry of the Satisfaction, 12 d.

For every Copy of Interrogatories, Depositions of Persons examined upon Interrogatories, by order of Court, for every sheet, the like for Copies of Affidavits, 8 d. *Interrogator.*

Per breve de Privato Sigillo.

WOLSELY.

Rules

Rules and Orders for the Common-Bench, *formerly appointed by the Judges of that Court, and ſtill in practice, with ſeveral Additions and alterations as followeth.*

Concerning Attorneys and Officers.

THat all Officers and Attorneys of the Court be admitted of ſome Inns of Court, or Chancery, in the ſame Term wherein they are admitted Officers or Attorneys, and be in Commons one week in every Term, and take Chambers there; Or in caſe that cannot be conveniently, yet to take Chambers or dwellings in ſome convenient place, and leave notice with the Butler where their Chambers or Habitations are, under pain of being put out of the Roll of Attorneys.

2. That all Officers and Attorneys of this Court, appear in perſon in this Court, upon, or before the 14 day of *Michaelmas*-Term, and upon or before the ſeventh day of every other Term, upon pain of 10 s. for the firſt default, 20 s. for the ſecond default, and putting out of the Roll for the third default. The appearance to be entred with the Clerk of the Warrants, and the Defaults to be delivered to the Court upon Oath (if required) within three days after the time required for appearance.

3. That the Clerks of Aſſize, their Deputies or Aſſiſtants, do perſonally appear with their *Poſteas* on the firſt day of *Eaſter* and *Michaelmas* Term; and the Deputy Sheriffs, and all other Officers of the Court do perſonally appear by the Eſſoyn-day of every ſecond Return of every Term; and continue there during the reſidue of the Term, without ſome juſt cauſe to the contrary allowed by the Court.

4. That for the future common Solicitors be not admitted to practiſe in this Court, unleſs they are ad-

admitted Attorneys of either Bench; provided that it extend not to the managing of Evidence at a Tryal, nor to private Solicitors, or Servants of Corporations, or other persons in the cases of their Masters.

5. That none be admitted an Attorney of this Court for the time to come, unless he hath practised as a common Solicitor in this Court by the space of five years now last past; or hath served, or shall have served by the space of five years as a Clerk to some Judge, Serjeant at Law, practising Council, or Attorney, Clerk or Officer of one of the Courts of *Westminster*, unless his Master die, or give over his practice, and be also upon examination found of good ability and honesty for such Employment; and that sufficient proof (to be put into writing) be made of such service to the Prothonotary upon a desire of Admittance, and filed with the Clerk of the Warrants without Fee.

6. That no person practise in another's name, nor that any Attorney knowingly permit another to practise in his name, upon pain of being put out of the Roll, excepting in Warrants of Attorney for common Recoveries.

7. That Attorneys dismissed by one Court from the practice for misdemeanour, be not (after Certificate) admitted to practise in another Court, it being contrary to the intent of the Law.

8. That no Under-Sheriff, or Bayliff of Sheriffs of Liberties be admitted during such their Employment to practise as Attorneys, under pain of expulsion from the Employment of an Attorney, and not to be re-admitted.

9. That such Attorneys as have not been attending their Employment in this Court by the space of one year last past, unless hindred by sickness, be not allowed their priviledge of Attorneys.

10. That

10. That for the prevention of maintenance and brocage, no Attorney be Leſſee in an Ejectment, nor Bail for a Defendent in this Court in any Action.

Hill. 14, & 15. Car. *Secundi Regis.*

IT is ordered, That every Sheriff ſhall make and cauſe to be entred on Record a ſufficient Deputy, to receive all manner of writs and proceſs, under the pains and penalties mentioned in the Statute in that behalf made, in the three and twentieth year of the Reign of the late King *Henry* the Sixth, which Law ſhall from henceforth duly be put in execution.

And it is further ordered, That the ſaid Sheriffs, or their ſufficient Deputies, ſhall give their perſonal Attendance in *Weſtminſter*-Hall daily in the Term-time; that ſo they may with the more convenience diſpatch thoſe ſervices which appertain to their Office reſpectively; and that no Sheriff, nor Sheriff's Deputy, ſhall deliver or make, nor cauſe or ſuffer to be delivered or made, any warrant or warrants, before the writ or writs be duly ſued forth, and delivered to the ſaid Sheriffs, or their Deputies reſpectively: neither ſhall the ſaid Sheriffs, nor their Deputies, deliver, nor cauſe or ſuffer to be delivered, any blank warrants; Nor ſhall any Clerk or Attorney of this Court receive, or procure to be made, any ſuch blank warrants, upon pain of ſevere puniſhment, and Fine to be impoſed upon the ſaid Sheriffs, and their Deputies, and utter expulſion of the ſaid Clerks or Attorneys reſpectively offending in the Premiſſes.

It is ordered by the Court, That no Bayliff nor Sheriff's Officer, ſhall preſume to exact or take from any perſon, being in his Cuſtody, by Arreſt, any warrant, to acknowledge a Judgment, but in the preſence of an Attorney for the Defendent; which

Attorney

Attorney ſhall then ſubſcribe his name thereunto: which ſaid warrant ſhall be produced, when the ſaid Judgment ſhall be acknowledged: and if any Bayliff or Sheriff's Officer ſhall hereafter offend, or do contrariwiſe, he ſhall be ſeverely puniſhed for ſo doing. And it is further ordered, that no Attorney ſhall from henceforth acknowledge, or enter, or cauſe to be acknowledged or entred any Judgment, by colour of any warrant gotten from any Defendent, being under arreſt, otherwiſe than is aforeſaid.

Whereas many perſons arreſted upon mean Proceſs iſſuing out of this Court, and upon Plaints levyed in inferiour Courts, and removed to the *Fleet* by *Habeas corpus*, with thoſe Cauſes returned upon them, habe been detained thereupon for a long time, as well in the Cuſtody of Sheriffs and Goalers, as in the Priſon of the *Fleet*, without any proſecution, or proceedings againſt them in this Court: Now forasmuch as every perſon having cauſe of Action againſt any priſoner in the *Fleet*, may have ſpeedy proceedings againſt ſuch priſoner therefore; and alſo to prevent unjuſt vexations, by long detaining of perſons in priſon there for the future. It is ordered by the Juſtices of the Court of Common-Bench, this preſent Saint *Hillary* Term, That if any perſon be committed to the *Fleet* by *Habeas corpus*, in this preſent Term, or in any other *Hillary* Term, or in the Vacation following this Term, or any other *Hillary* Term, unleſs the Plaintiff or Plaintiffs, at whoſe Suit the Priſoner ſtands charged at the *Fleet*, ſhall bring ſuch Priſoner to the Bar of this Court by *Habeas corpus*, and declare againſt him within ſix days after *Trinity* Term begun, ſuch Priſoner may be diſcharged by *Superſedeas*, to be iſſued of courſe out of the Prothonotaries Office of this Court, where the

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Commitment of the ſaid Priſoner, with his cauſe, is entred; ſo as ſuch Priſoner enter firſt his Apparance by Attorney with the ſaid Prothonotary, in caſe of an Attachment of Priviledge, or of a Plaint; or with the Philizer, upon other Proceſs returnable in this Court; and do bring a Certificate under the hand of the Warden or Clerk of the *Fleet*, that no proceedings by *Habeas corpus* have been had againſt him within the time aforeſaid; And that if any perſon be committed to the *Fleet* at any *Eaſter*-Term, or in the Vacation following any *Eaſter*-Term, unleſs the Plaintiff or Plaintiffs bring ſuch Priſoner to the Bar of this Court by *Habeas corpus*, and declare againſt him within ſix days after *Michaelmas*-Term begun, ſuch Priſoned ſhall be diſcharged in manner aforeſaid.

And that if any Priſoner be committed to the *Fleet* in any *Trinity*-Term, or in the Vacation next following any *Trinity*-Term, unleſs the Plaintiff or Plaintiffs bring the Priſoner to the Bar of this Court by *Habeas corpus*, and declare againſt him before the end of *Michaelmas*-Term following, ſuch Priſoner may be diſcharged in manner aforeſaid; And that if any Priſoner be committed to the *Fleet* in any *Michaelmas*-Term, or in the Vacation following, after any *Michaelmas*-Term, unleſs the Plaintiff or Plaintiffs bring the Priſoner to the Bar of this Court by *Habeas corpus*, and declare againſt him within ſix days after *Eaſter*-Term begun, ſueh Priſoner may be diſcharged in manner aforeſaid; And the Plaintiff or Plaintiffs may declare upon ſuch Apparance entred the next Term after ſuch Apparance or *Superſedeas* granted: And the Attorney appearing for ſuch Priſoner, ſhall be bound to take a Declaration, and not afterwards.

And as concerning perſons arreſted, and remaining

ing in the Custody of any Sheriff or Goaler upon any mean Process issuing out of this Court; It is further ordered, That if the Plaintiff or Plaintiffs, at whose Suit such person is arrested or in Custody, do not remove such Prisoner by *Habeas corpus* to the *Fleet*, nor the Prisoner enter Apparance in manner aforesaid, such Prisoner may be discharged by *Supersedeas*, in the end of the third Term after the Arrest, according to the course anciently used; and the Plaintiff may declare upon such Apparance the Term following, but not after.

But if such Prisoner cause Apparance to be entred for him by Attorney, and cause notice thereof to be given to the Plaintiff or his Attorney, and if Oath thereof be made in writing and filed in Court, unless the Plaintiff or Plaintiffs declare against such prisoner in the Term next after such Apparance, the prisoner may be discharged by *Supersedeas*, so as Oath be made by the Attorney for the Defendent, that no Declaration hath been delivered or tendered to him; and the Plaintiff or Plaintiffs may declare against the Defendent the Term next after such Apparance entred, but not afterwards.

And for the certainty of the practice in proceedings to be had against Prisoners in the *Fleet*, by vertue of the late Act of Parliament, It is further declared and ordered by this Court, That in case any such prisoner shall hereafter be brought to the Bar of this Court by a Writ of *Habeas corpus*, returnable at any day certain, being before the day of Apparance of the third Return of any Term; and the said Prisoner name an Attorney, who shall appear for him at the Suit of the Plaintiff, in the Action in the said Writ specified, the said Defendent be compellable to plead by the last day of the said Term, to a Declaration, to be delivered to his said Attor-

ney, if the Plaintiff give a Rule for him ſo to do: But where any Priſoner is brought to the Bar by ſuch Writ returnable, after the day of Appearance of ſuch third Return of any Term, the Defendent (of courſe) is to have Imparlance until the next Term following: But if ſuch priſoner refuſe to nominate an Attorney to appear for him, then ſuch priſoner is to plead in eight days, according to the ſaid Act; provided, there be eight days after the Return of the *Habeas corpus*, to give a Rule to be out within the Term.

And laſtly, it is ordered, That after Iſſue joyned, ten days notice at the leaſt excluſive of the day of ſuch notice be given to the Defendent, (being actually in priſon of the Fleet) of the time of Tryal of ſuch Iſſue to be had.

Concerning the Reformation and Puniſhment of Abuſes in general.

ORdered, That a Jury of able and credible Officers, Clerks, and Attorneys once in three years be impannelled, and ſworn to enquire.

1. Of the points uſually enquirable by the Writ, *viz.* falſities, contempts, miſpriſions and offences.

2. Of ſuch who have been admitted Attorneys or Clerks, and are notoriouſly unfit, their names to be preſented to the Court, and they to be puniſhed or removed, as the caſe ſhall require.

3. Of new or exacted Fees, and of thoſe that have taken them, under whatſoever pretence, and to prepare and preſent a Table of the due and juſt Fees, that the ſame may be fixed and continue in every Office, and likewiſe for the *Fleet*.

4. And that ſome perſons be injoyned and ſworn to give evidence, *viz.* ſome Clerks of the Court, and ſome Attorneys in every County, not excluding others.

Con-

Concerning the better preservation of Order among the Officers and Clerks, and observation of breach of Orders and Misdemeanours.

THat the Court do once every year in *Michaelmas*-Term nominate twelve or more able and credible Practisers in the Court to continue for the year ensuing, for these purposes hereafter limited.

That they or any six of them examine such persons as shall desire to be admitted Attorneys, and appoint convenient times and places for the same; and in order thereunto, that such persons as shall desire to be admitted Attorneys, first attend the Prothonotary with his proof of service, then to repair to the persons appointed to examine Attorneys, and being approved to be presented to the Court with the assignation of his approbation, and then to be sworn in open Court, unless some just exception be against him.

That they give information to the Court from time to time of breaches of Orders, and miscarriages of Officers, Attorneys, and Clerks.

That a settled course of Practice and Proceedings be settled, especially in those Cases where there hath been uncertainty, and that the inconveniencies in process, proceedings, and pleadings may be regulated unto a due course. In order whereunto these several things are ordered and directed according to the method of Proceedings.

1. *Concerning the Entring of Records, and the Persons by whom.*

THat no Rolls be delivered to be entred, but only to Clerks, or such Attorneys as have entred for the space of four years last past, for themselves.

That a Table be set up of the names of the Officers and Clerks that are to be admitted unto the Rolls in the Treasury; and that such and no others

be admitted thereunto, and that they may resort there as well for their Occasions, as for their Learning and Instruction, during the Term, and also twice in every week for a month after the Term, and that every such Clerk duly attend as well the Prothonotaries Office in the Term-time, as for the entring of Judgments upon Summons given by the Prothonotary respectively.

Whereas every Attorney of this Court, as well by his oath and the duty of his place, as under divers penalties provided by several Acts of Parliament, and former Orders of this Court, being retained to be Attorney for any person or persons, Demandant or Plaintiff, Tenant or Defendent, in any Action or Suit in this Court, is bound to deliver or cause to be delivered his Warrant of Attorney to the Officer or his Deputy ordained for the receit and entry thereof in this Court. And whereas by the Statute made in the third year of the Reign of our late Sovereign Lord King *James*, it is enacted, That no Attorney shall permit any other to follow any Suit in his name; And that every Attorney so doing, should be excluded from being an Attorney for ever hereafter. And whereas by order of this Court, every Attorney of this Court ought to appear in person upon or before the 14*th* day of *Michaelmas* Term; and upon or before the 7*th* of every other Term, upon pain of 10 shillings for the first default, 20 shill. for the second default, and putting out of the Roll for the third default; and that the Apparance should be entred with the Clerk of the Warrants, and that the names of the Defaulters should be delivered to the Court by the Clerk of the Warrants or his Deputy within three days, after the time required for apparance: Notwithstanding all which Laws and Orders, through the disorderly practice

practice and negligence of divers Attorneys of this Court, especially of the younger sort, for want of their Attendance upon their Office of Attorney here in Court, and permitting others to practise in their names, and neglect to deliver their Warrants of Attorney to be filed and entred of Record, very many great inconveniencies, troubles, and errours have been found and arisen of late time more than formerly to the scandal of the Court, and of the honest Attorneys practising therein, and the great prejudice and loss of many of his Majestie's good Subjects, as well Plaintiffs as Defendents, Demandants and Tenants in their duties depending in this Court.

For remedy whereof, and for avoiding of Errours for the time to come, it is forbidden by the Justices of this Court, upon pain of expulsion from this Court, That no Attorney of this Court permit any other to practise in his name: And it is further declared and ordered by this Court, That every Attorney of this Court do from henceforth appear in person within the times in every Term before limited and expressed, under the penalties before mentioned for their Defaults; and that every Attorney of this Court do file his Warrants of Attorney of the Term in which any *Exigent* is awarded, *Demurrer* or Issue joyned, or Judgment entred; or which of any of them shall first happen, upon pain of 40 shill. for every time he offendeth, and be attainted by due examination made by the Justices of this Court, such warrant to be filed upon or before the Essoyn-day of every *Trinity*-Term, and within the space of 21 days next after the end of every other Term. And that no Officer of this Court do make, or suffer to be made any Process or Entry in the name of any person not sworn an Attorney, nor entred in the Roll of Attorneys, or in

the name of any Person put out of the Roll of Attorneys either as a discontinuer, or for any misdemeanours, or by any Rule of Court after notice thereof given to such Officer by the Clerk of the Warrants of this Court for the time being, or his Deputy. And for the better effecting the due observance of this present Order, it is lastly ordered, that the Clerk of the warrants of this Court for the time being, or his Deputy, or the persons appointed yearly by the Court to give information to the Court from time to time of breaches of Orders, and miscarriages of Officers, Clerks, and Attorneys in every *Michaelmas*-Term, or oftner if required, shall and may present to the Court from time to time, the name and names of every Attorney or Attorneys offending against this Order, to the intent that the Court may examine every Attorney complained against concerning any of the matters before rehearsed: And upon such Attaint of any such Attorney, upon due examination had, may inflict such punishment by Fine, Imprisonment, or Expulsion, as the case shall require; or give directions to be exhibited against the most frequent and notorious Offenders, for the greater penalties mentioned in the Statutes thereof made and provided.

For the prevention of the undue issuing of Judicial Writs, and falsifying of Records, It is Ordered,

That all Executions and all other writs issuing out of the Prothonotaries Offices be duly signed by the respective Prothonotaries before the same be sealed, and that no Exemplification of any Common Recovery, or other Record which ought to be examined and signed by the Prothonotary, be sealed before the same have been signed by the Prothonotary. Nor that any Exemplification (excepting Exemplifications

of

of Fines and Common Recoveries of the preſent or next precedent Term) be ſealed, before they be firſt ſigned and examined by the Clerk of the Treaſury.

And becauſe the intermedling and dealing of Clerks in more than one Prothonotarie's Office at one time, hath been an Occaſion of diſorder and uncertainty in Proceedings: It is likewiſe ordered, That every Prothonotarie's Clerk do apply himſelf from henceforth to one Prothonotarie's Office only, and do give his attendance and make his Entries in that Prothonotarie's Office.

2. *Concerning Rolls and Records, and their Entries and bringing in.*

THat the whole proceedings of any Cauſe after the appearance be carried on in the Office of that Prothonotary where it was firſt entred, or Declaration delivered.

That no Rolls be carried into the Country, under pain that the Offender be excluded from entring any more Rolls afterwards as a Clerk.

That the common Rolls of every Term, except *Eaſter*, be brought in to the Prothonotary fairly entred and docketed at leaſt ten days before the Eſſoyn-day of the ſucceeding Term, under pain of ten ſhillings for every Roll wanting.

And that no Rolls be delivered to ſuch perſon after any ſuch offence the ſecond time, without ſpecial Order.

That the reſpective Prothonotaries before the third day of the then next Term, do give in the Names of the Defaulters and Defaults unto the Court in writing.

That the Rolls brought in to the Prothonotary, be delivered over to the Clerk of the Warrants the day before the Eſſoyn-day of the enſuing Term, together with a Note of the Rolls that are wanting,

the same Note to be subscribed by the Clerk of the Warrants, and delivered to the Prothonotary.

That the Clerk of the warrants within five days after receipt of the Rolls from the Prothonotary to deliver over the common Rolls to the Clerk of the Essoyns, taking the like Note from the Clerk of the Essoyns of the Rolls wanting.

That the Clerk of the Essoyns bind up the Rolls, *viz.* the first part before the apparance-day of the second Return, the second part before the Essoyn-day of the third Return, and the third part before the Essoyn-day of the next Term.

That the Rolls of *Easter*-Term be brought to the Prothonotary on or before the first day of *Trinity*-Term, delivered to the Clerk of the warrants within six days, to the Clerk of the Essoyns within five days after, to be bound up before the Essoyn-day of *Michaelmas*-Term, each party subscribing the like Notes, and the penalties the same as before.

Concerning Original Suits and Process, where laid.

THat Actions upon the Case, Trespass for Goods, Assault, or Imprisonment, arising in any English County, be laid in their proper Counties, unless they arise where Justices of *Nisi prius* seldom come. And because Trespass or Trover for Goods, Battery, Imprisonment and Slander must needs be notorious in what County they arise; the Attorney knowingly laying them out of the proper County (unless in the Cases before expressed, or for such other Causes as shall be allowed by a Judge of the Court, and duly made appear to be true) be severely punished.

That although the Declaration be delivered seven days before the last day of the next precedent Term, or after, yet before Plea upon Oath made the

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Viſne may be changed upon motion, in the ſaid tranſitory Actions, the next Term after; and the Defendent to plead to the new Action as he ſhould have done in the other, without delay.

That the Viſne may be changed (upon Oath) as before, though the Defendent come in by *Exigent*.

Concerning Proceſs, and ſerving thereof.

THat according to the proviſion of the Statute of the one and thirtieth year of Q. *Elizabeth*, all Attorneys that ſue out Proceſs of *Exigent*, be careful that writs of Proclamation be delivered, and the Sheriff do take care duly to execute the ſame.

That according to the Statute of the twenty third year of *Henry* the Sixth, a priſoner taken upon a *Capias* in proceſs, be not diſcharged till he hath given bond to appear, unleſs the Plaintiff or his Attorney ſhall conſent to take an apparance without Bail; and in ſuch caſe the Warrant of Attorney to appear, to be ſubſcribed or accepted by the Defendent's Attorney, and ſuch warrant not to be revoked, and an Attachment to be granted againſt the Bayliff offending herein, or againſt the Attorney refuſing to appear or procure an Apparance, having ſo ſubſcribed or accepted.

And foraſmuch as divers Sheriffs, Bayliffs of Liberties, and their Bayliffs reſpectively, have of late time contrary to Law, and againſt former Orders of this Court, diſcharged perſons taken upon Outlawries without *Superſedeas*; It is hereby declared, that ſuch dealing is an abuſe; and that all ſuch who have or ſhall diſcharge ſuch perſons without *Superſedeas* ſhall be ſeverely puniſhed. And that no Sheriff, Under-Sheriff, their Deputies or Bayliffs, may from henceforth diſcharge or ſet at Liberty any perſon or perſons arreſted upon any *Cap. Utlag.* until he receive a *Superſedeas* according to

Law,

Law, from the Officer or Officers thereunto appointed.

Concerning a Habeas Corpus *to Sheriffs and Goalers.*

THat a *Habeas Corpus cum cauſa ad faciendum & recipiendum*, directed to any Sheriff (other than *London* or *Middleſex*) not to be returnable *immediate*, or in the Vacation time, but at a day certain in Court in the Term.

That ſuch *Habeas corpus* to the Sheriff of *London* or *Middleſex* may be granted in Term or Vacation-Time returnable *immediate*.

That in caſe of *Habeas corpus*, returnable *immediate*, the Sheriff ought to make his Return the ſame day that the writ is delivered, and to bring the Body immediately as is required by the writ, without permitting him to wander abroad by colour or pretence thereof.

That where a writ of *Habeas corpus* is directed to a Sheriff, Warden of the *Fleet*, Marſhal or Goaler, the Priſoner is to be brought in cuſtody according to the writ at the day limited, without being permitted to wander abroad in the mean time, upon pretence of ſuch writ.

That a *Habeas corpus ad reſpondendum* may be granted to the Warden of the *Fleet*, or to the Keeper of an inferiour Priſon of a Liberty or Franchiſe, where a *Capias* is returned in Court, *Non eſt inventus*; ſuch writ to recite ſhortly the *Capias*, and to be returnable at a day certain in Court, and to be a good cauſe of *Detainer*, as well as where a *Capias ad reſpondendum* comes to a Sheriff.

That a *Habeas corpus ad ſatisfaciendum* may be granted to the Warden of the *Fleet*, or to ſuch inferiour Goaler returnable in Court, at a day certain, and the Number-Roll of the Judgment to be endorſed

ſed upon the Writ by the Attorney who ſues it out; and ſuch Writs to be a cauſe of *Detainer*.

That if upon a *Habeas corpus* the priſoner be returned charged with proceſs out of the King's Bench or Exchequer, and out of the Common-Pleas, the Priſoner may be committed with thoſe Cauſes.

That if upon a *Habeas corpus cum cauſa* the priſoner be returned charged with a Proceſs out of the Common-Pleas, though returnable at a day to come, the priſoner may be committed with this Cauſe.

That if upon a *Habeas corpus*, or *Cepi corpus*, the party be returned in cuſtody and bailable, and ſpecial Bail requirable, the Bail not to be taken abſolutely without conſent of the Plaintiff or his Attorney, and if taken *de bene eſſe*, the priſoner not to be diſcharged till the Bail be aſſented unto, or the Plaintiff overruled in Court to accept the ſame upon examination.

That upon every Commitment by a Judge out of Court, the Proſecutor of the *Habeas corpus* is to have one of the Prothonotarie's Clerks preſent at the turning over of the priſoner, that the Commitment may be duly entred and filed.

Concerning Habeas Corpus *to Inferiour Courts, and* Procedendo.

THat Writ of *Habeas corpus*, directed to the inferiour Courts of *London*, *Weſtminſter*, *Southwark*, and other Courts within five miles of *London*, may be returnable *immediate*. And if the Defendent intendeth to be bailed, then upon or within four days after allowance of the Writ, notice is to be given in writing of the Names and addition of the Bail, the time when, and the Judge before whom the ſame is intended to be put in, to the Plaintiff or his Attorney, or him that cauſed the Plaint to be entred; or if none can be found, then notice of the Premiſſes to

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be left in writing with the chief Clerk of the Inferiour Court, or his Deputy by the party that tenders the Bail, or his Attorney, and Oath made thereof; otherwise the Bail not to be taken, and a *Procedendo* granted if desired, before Bail accepted.

That if no Bail in such cases be put in within eight days after the *Habeas corpus* allowed, in those Courts when it is returnable *immediate*, a *Procedendo* may be granted by any Judge of this Court, if desired before Bail taken.

And if Bail be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*; and if exception be taken within twenty days days after notice given to the Plaintiff or his Attorney of the names of the Bail, and before whom taken, then upon oath made of such notice, the Bail to be delivered out to be filed.

That if Bail upon a *Habeas corpus* be taken before a Judge at his Chamber, and not dissassented unto, if not filed within four days after the twenty days, a *Procedendo* may be granted upon Certificate that it is not filed.

That in Term-time the Plaintiff in the inferiour Court may speed the Defendent to put in, or to file his Bail by rules given in the Bill of Pleas; and if not filed according to rules, upon Certificate thereof, a *Procedendo* to be granted.

That all Writs of *Habeas corpus* returnable in Court, be returnable at a day certain.

That upon Bail taken of a person in custody, the Judge's Clerk do deliver the Bail to the Prothonotary, to be filed, if assented unto; and to that end the Prothonotarie's Fees to be deposited, but the prisoner not to be discharged, until the Bail be assented unto, or over-ruled in open Court.

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Concerning Special Bail.

THat if the Defendent appear upon the Summons, Attachment, or Diſtreſs, or by *Superſedeas quia improvide*, or do truly render himſelf upon the *Exigent*, no Bail is requirable. f. 49. 319. 362.

That in all cauſes of Removal, be it by *Habeas corpus*, Priviledge, or *Certiorari*, ſpecial Bail ought to be given.

That in cauſes where the Defendent comes in by *Cepi corpus*, be it Debt, Detinue, Treſpaſs for Goods, Action upon the Caſe, (except Slander) if the Debt or damages amounts to twenty pounds, ſpecial Bail is to be given, except it be againſt an Heir, Executor, or Adminiſtrator.

That in Covenant becauſe the Damages are uncertain, till Declaration, Bail at diſcretion.

That in Battery, Conſpiracy, falſe Impriſonment, no ſpecial Bail of Courſe, without ſpecial order and motion.

That in Slander no ſpecial Bail, except in Slander of Title, wherein to be left to the diſcretion of the Judges.

That in Priviledge, other than for Fees and diſburſements as an Attorney in this Court, Bail at diſcretion of the Court; In ſuch caſe where in a Suit by a common perſon, ſpecial Bail is not requiſite.

That if Bail be given upon reverſal of an Outlawry, or removal by *Habeas corpus*, the Original to be ſhewn upon tendring of the Declaration, otherwiſe the Bail not lyable; unleſs the party or his Attorney will voluntarily appear, or take a Declaration without ſhewing of it.

That in caſe of a removal out of an inferiour Court, for reverſal, the new Original to agree in the nature of the Action, the ſum in demand, and the County, otherwiſe the Bail not lyable; but if the

party

party will voluntarily appear to such varying Original, to be good as to the party: But if upon a cause removed by *Habeas corpus*, out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Pool*, which are Counties where the Judges of *Nisi prius* seldom come, if the Action be transitory, it must be laid in the County of *Kent*, *Southampton*, *York*, *Stafford*, or *Dorset*, where the Town and County lyeth, and the Recognizance to be taken accordingly.

That the Principal rendring himself at any time after Bail put in, and before or upon the day of appearance of the *Scire facias* returned *Scire feci*, or of the second *Scire facias* returned *nihil*; or in case there shall be an Action of Debt brought upon the Recognizance against the Bail, then if the Principal shall render himself, upon or before the Process returned served, no further proceedings to be against the Bail.

Concerning Apparances, and Entries thereof.

THat Apparances be duly entred with the Prothonotaries or Philizers of this Court respectively, with whom the same ought to be entred: but if special Bail be requirable in the Case, the Plaintiff not to be concluded by such apparance, if he insist upon it.

That where an appearance is upon the Original Writ, if the Defendents apparance be not entred of Record, the Defendent's Attorney to give his hand to the Plaintiff's Attorney upon the delivery of the Declaration, that he appeareth thereunto.

That any Attorney of either Bench accepting a Warrant to appear, or subscribing a Process, Declaration, or Warrant to appear, be compelled to cause apparance, or be liable to an Attachment, or put out of the Roll, as the case requires; and the party not to be received to countermand such apparance

pearance after his Retainer.

That no person without Rule of Court, Order of the Judge or Prothonorary, and Notice to the adverse party or his Attorney, change or shift his Attorney, and such Attorney newly coming in, to take notice at his peril of the Rules whereunto the former Attorney was liable, had he continued.

That a Reteiner of an Attorney of the Common-Pleas, by an Attorney of the King's Bench, *& è converso*, be a sufficient excuse to the Attorney so retained, acting according to such Retainer, and the Attorney so reteining without Warrant from the party, to be subject to the punishment.

That if a *Capias* be returned in Court *non est inventus*, against a prisoner in the *Fleet*, he is compellable to appear upon a *Habeas corpus ad respondendum*, as well at the Suit of a Stranger, as at his Suit whereupon he is imprisoned, and to answer to a Declaration according to the Rule of the Court, or that Judgment be entred against him.

That he that reverseth an Outlawry have an Attorney of Record present, who must undertake an apparance to a new Original. And such Attorney shall be compelled to appear, and that the Defendent or his Attorney give notice to the Plaintiff or his Attorney, of such reversal the same Term, or in the Vacation next after it.

Concerning Imparlances.

THat forasmuch as some Inconveniences do sometimes happen to Plaintiffs by entring their Declaration in special Actions, It is therefore ordered, That the Plaintiffs in such special Actions shall have liberty to enter the Imparlances the Term following, entring the same of the first Term with an *Incipitur*; as it hath been usual in *Quare Impedit*: but that all other Imparlances be duly

duly entred before any Iſſues or Demurrers, or Judgments thereupon be entred.

That if the Defendent appear the firſt Term, and give no Rules to declare, the Defendent's Attorney may the ſecond Term be compelled to accept of a Declaration with Imparlance, and the Declaration may be entred as of that Term, with an Imparlance over to the next Term, or in the firſt Term with an *Incipitur*, as before, as the Caſe ſhall require.

That if the Plaintiff declare not the ſecond Term, though the Defendent give no Rules, yet a Non-ſuit may be entred at the end of the ſecond Term upon a continuance over by him entred by *dies datus*, but not the third Term, or after.

That upon a meer real Action, or a bare *Clauſum fregit*, an Imparlance of courſe; but in Dower after view had, if the day to appear be upon the firſt Return of any *Hillary* or *Trinity* Term, no Imparlance without Conſent or Rule of Court.

That in Ejectment, or any perſonal Action, If the apparance be the firſt Return of *Hillary* or *Trinity* Term, no Imparlance without conſent or ſpecial Rule in ſuch Cauſes, other than in *London* or *Middleſex*. If the apparance be before *Craſtin. Martin.* or *Menſe Paſch.* no Imparlance without conſent, or ſpecial Rule. But if upon or after thoſe Returns, no Imparlance of courſe.

In *London* or *Middleſex*, if the apparance be before *Craſtin. aſcen.* or before the laſt return of any other Term, no Imparlance without a ſpecial Rule or conſent; but the Defendent to plead as of that Term within 14 days after the end of the Term upon Rule given to anſwer: But if of *Craſtin. aſcen.* or the laſt Return, then an Imparlance of Courſe.

Con-

Concerning Rules to Declare and Plead.

THat no Judgment by *Nihil dicit* be entred until there be a Rule to plead, firſt given in that *Prothonotaries* Office, where the cauſe is entred, and the day by ſuch Rule be paſt, and that ſuch Rules be only given in the Bills of Pleas, or other Remembrances for that purpoſe, only to be in the cuſtody of the Secondary of the reſpective *Prothonotaries*, during the time limited for giving of Rules, to the intent that all perſons concerned may have recourſe to the ſaid Secondary, and to ſee the ſame *Gratis*, and that Clerks who uſually enter for Attorneys, may give Rules for anſwer in the ſaid Remembrances in all their own Cauſes wherein there hath been Imparlances, except in Ejectments, ſo as they enter the ſame Rules in the Office, without carrying any of the ſaid Remembrances out of any of the ſaid Offices, and that the Secondary ſet down upon the Remembrances the day wherein ſuch Rules are given, and that no Rules to declare or anſwer be given after three days excluſive after the end of any Term, and ſuch Rule to be out at four days inclusive of the day wherein the ſame is given.

That in all Actions except Replevin (after Rules to declare are out, yet) if the Plaintiff, or his known Attorney, or Clerk to be found, a Nonſuit for want of a Declaration not to be entred, until the Plaintiffs Attorney or known Clerk be firſt called to for a Declaration.

That if the Plaintiffs Attorney or Clerk be called to for a Declaration, and delivers it not to the Defendent or his Attorney ſometime during that Term, then the Rule being out, the Defendents Attorney may enter a Nonſuit.

That if the Plaintiffs Attorney being called to for

a Declaration, cannot afterwards find the Defendents Attorney or Clerk, to save a Nonsuit, he may deliver a Declaration into the *Prothonotaries* Office where the Rule is given.

That when a Deed, Will, or Letters of Administration are to be shewn in a Declaration, the Attorney of the Plaintiff delivering a Declaration with a Subscription, that the Defendent shall not be compelled to plead till the same be shewn, no Judgment by *Nihil dicit* be entred against the Defendent till the same cause shewn. Nor any Nonsuit upon the Plaintiff, if he shew the same cause before the end of the next Term.

If the Defendent be committed to prison by process out of this Court of *Habeas Corpus*, the Prisoner entring his apparance with the *Prothonotary* in case of a plaint, or in case of attachment of priviledge, or with the *Philizer* in case of other process, and giving Rules to declare, the Plaintiff not declaring before the end of the next Term after the commitment, the Defendent in reference thereunto to be discharged of his imprisonment by *Supersedeas* in the end of the next Term, and liberty for the Plaintiff to declare upon that apparance the next Term after that at the furthest.

That if a Writ be returnable *Pasch.* or at the last return of any Term, the Defendent giving Rule, and calling for a Declaration, if it be not delivered according to the former directions, four days or more before the Essoin-day of the ensuing Term, may enter a Nonsuit, though above 10 days after the preceding Term.

That the Plaintiff having declared and given a Rule for answer, the Defendent is to deliver his Plea in writing to the Plaintiffs Attorney, or known Clerk.

That

That if there be no such Attorney or Clerk to be found, or being found, refuseth to accept it, then the Plea may be left in the Office to save a Judgment.

That in any case where a Plea or Declaration is left in the Office, no Nonsuit for want of a Declaration, or Judgment for want of a Plea be entred.

That in Cases of Popular Actions, Informations, or real or mixt Actions, except Ejectment, no Judgment to be entred by default, or *Nil dicit*, without a motion in Court.

That upon *Nul tiel* Record pleaded, and no difficulty or variance appearing, Judgment be entred after Rule, without motion by the Plaintiff.

That after any Imparlance of three Terms, without any calling for answer, no Judgment to be entred without a Terms Notice.

Concerning Declarations.

FOr avoiding of long and unnecessary Repetitions of the Original writ in Actions upon the Case, and personal Actions upon penal Statutes.

That Declarations in Actions of Trespass upon any general Statute; namely, Hue and Cry, Monopolies, and for Suits in the Admiralty, and such like, other than Debt, repeat not the Original writ, but only the nature of the Action, *viz. A. B.* was attached to answer *C. D.* in a Plea of Trespass and Contempt, against the form of the Statute,

For the avoiding of the Common Bar, and new Assignment.

THe Declaration upon an Original or Bill, *Quare clausum fregit*, may mention the place certainly, and so prevent the use and necessity of the Common Bar, and new Assignment.

That unnecessary length of Declarations be reformed. And in order thereunto,

That in Actions of Covenant, not to repeat more of the Deed than is necessary for the assignment of the breach, and not to repeat the Covenant in the conclusions.

That in Actions of Slander long preambles be forborn, and no more inducement than what is necessary for the maintenance of the Record, when it requires a special inducement or *Colloquium*.

That in Actions upon general Statutes, the Declaration not to repeat the Statute, but to conclude against the form of the Statute in such case made and provided: as in case of Debt, upon the Statute of the second year of *Edward* the Sixth, for Tithes, the 32 of *Henry* the Eight, for Maintenance, 28 *Jac.* of Monopoly.

That Actions of Debt upon a Judgment had in the Courts of *Westminster*, to recite only the Judgment. But if a Judgment had by or against an Executors or Administrators Debt, thereupon to repeat a Declaration and Judgment.

That before the Declaration actually entred, the Plaintiff may amend his Declaration, paying costs, or giving an Imparlance at the Plaintiffs Election, by the Order of a Judge of the Court, or *Protbonotary*: But after it is entred, if the amendment be but a small matter that doth not deface the Roll, yet that before Issue or Demurrer entred, it be amendable by the Court, upon costs and liberty to plead, with a new or further Imparlance.

To chuse care in the Examination of the Declaration.

THat if the Plaintiffs Attorney or Clerk deliver a Copy to the Defendents Attorney or Clerk, ma-

materially varying from the original Declaration, the disadvantage thereof not to be cast upon the Defendent, but on the Plaintiff, whose Attorney is paid for it.

Concerning Pleading.

THe Common Bar and New Assignment to be forborn, where the Declaration contains the certainty equivalent to the new Assignment.

That Pleadings be succinct, without unnecessary Repetitions.

That in the pleading of an Outlawry the *mesne* Process be not repeated, but the *Exigent* and Outlawry joyned to the commencing of the Suit.

That in pleading a general Statute, the Statute be not recited: As the Statute of 21 of King *James*, of Limitations.

Concerning Demurrers.

THat according to the Stat. of 27 *Eliz.* upon Demurrers, the Causes be specially assigned, and not involved with general unapplied expressions of double, negative pregnant, uncertain, wanting form, and the like; but to shew specially wherein, that the other party may (as the Case shall require) either joyn in Demurrer, or amend, paying costs, or discontinue his Action.

That it be declared, that matters of form, as well on the part of him that demurs, as of him that joyns in all parts of the pleading, are discharged; unless such as are specially assigned upon the Demurrer.

Concerning Trials, and notice of Trials, and Inquiries.

THat notice of Trials or Inquiries in *London* or *Middlesex*, (the Defendent dwelling within 40 miles of *London*) be eight days exclusive of the day where notice is given.

That if the Defendent live above forty miles distant from *London*, notice of such Trials and Inquiries in *London* or *Middlesex*, be 14 days exclusive of the day of notice.

That in all Issues to be tried by *Nisi prius* in *London* or *Middlesex*, upon a Record of a precedent Term, the Copy of the Issue be brought to the Clerk of the Treasury, for the ingrossing of the Record, four days at the least before the day of Trial of such Issue; and that all Causes to be tried in *London* or *Middlesex*, be entred into the Marshals Books four days before the day of Trial.

That eight days notice exclusively be given upon Trials in the Country, and upon writs of Enquiry of Damages in writs of Dower and Waste; and all other Enquiries of Damages.

That if the Plaintiff give notice of a Trial, and he proceed not, the Plaintiff not to take it down to Trial again, without new notice to be given, as is before expressed, unless by Consent or Rule of Court.

But in *London* or *Middlesex*, if notice be given of a Trial for one sitting, and the Plaintiff be not provided to proceed; then if he give notice before the sitting, that he will try it the next sitting, that to be held convenient notice.

That in case of such warning, and no proceeding, the Defendent upon motion, to have his costs of his former attendance, to be taxed by the *Prothonotary*; unless the Plaintiff give the Defendent warning in convenient time that he would not proceed; or shew cause to be allowed by the Court in excuse of such Costs.

That no Record of *Nisi prius* be signed before the Issue be entred upon the Roll.

That if the Plaintiff give notice for a Trial, and proceed

proceed not, the Defendent may take it by *Proviso*, according to the Law, giving notice 8 or 14 days, as the case requireth, as aforesaid.

That in *London* or *Middlesex*, if no warning for a Trial, then the Defendent not to take it by *Proviso*, to try it the same Term; but afterwards he may take it by *Proviso*, according to Law, giving 8 or 14 days notice, as the case requires.

That if notice be given to the Attorney of the adverse party of a trial upon Issue joyned, it be taken to be good Notice; And Oath made of want of notice to the Attorney to turn the proof of notice given to the party upon him that brought it down to trial in that case.

That if an Issue be joyned above a year past in any case, then one Terms notice to be given of the trial.

Concerning Trials at Bar.

THat for the remedy of excessive Charges of Trials at the Bar, especially whilst the Jury lieth out, it is ordered that a Jury lying out one night after a privy Verdict delivered, there be allowed for the whole Diet of each Jury-man that night no more than 3 *s.* 4 *d.* apiece, and for two Criers to each of them no more than 2 *s.* ordinary, besides the charge of the Jurors Lodging.

That after a Verdict delivered in Court, the Jury and Officers to be paid their Charges and Fees in the Inner-Treasury, without going to the Taverns or Victualling-houses for that cause.

Concerning Special Verdicts at the Bar, or by Nisi prius.

THat in finding Special Verdicts where the points are single and not complicated, and no special conclusion, the Counsel (if required) do subscribe

ſcribe the points in queſtion, and agree to amend omiſſions or miſtakes in the *meſne* Conveyance, according to the truth, to bring the point in queſtion to Judgment.

That unneceſſary finding of Deeds in *hæc verba*, where the queſtion reſts not upon them, but are only derivation of Title, to be ſpared; and found ſhortly, according to the ſubſtance they bear in reference to the Deed, as Feoffment, Leaſe, Grant, &c.

Concerning new Trials.

THat where a Verdict find entire Damages, where Damages are the principal, and part not actionable, though Judgment be arreſted, yet by Rule of Court a *Venire fac. de novo* may iſſue as upon an ill Verdict, and upon the new Trial the party may ſever his damages.

Concerning Judgments.

THat in a Judgment by *non ſum informatus*, or *nihil dicit* in *Ejectione firmæ*, the *Capiatur* be entred upon the firſt Judgment.

That upon a cauſe removed by *Habeas corpus* out of an inferiour Court, having Juriſdiction of the Cauſe, if Judgment be given for the Plaintiff, the coſts below to be conſidered, and caſt into the Judgment, if for the Defendent, the charge of putting in Bail.

That the Principal in any Bond or Bill obligatory do not for the time to come give Warrant to appear for, or confeſs Judgment againſt his ſurety: and that after the two and twentieth of *January* next, no Judgment be confeſſed for, or given againſt the ſurety upon any ſuch Warrant given by the Principal.

That ſixteen days be allowed for the ſigning of Judgments after every Term, except *Eaſter* Term, upon cauſes depending in the Term precedent.

And

And lastly, It is declared by the Justices of this Court, as that the Court doth expect that all the Rules and Orders before mentioned be duly observed; so it is further ordered, that all other former Orders and Rules yet in force, not hereby altered, suspended or adnulled, be likewise observed and put in execution, according to the true intent and meaning of the same.

By the Court.

The OATH,

To be taken by every Attorney of the Court of *Common Pleas* at *Westminster*, before his Admittance, to be administred openly in Court by the chief Prothonotary.

YOu shall do no Falshood or Deceit, nor consent to any to be done within this Court: And if you shall know of any done, you shall give knowledge thereof to the Lord Chief Justice or other his Brethren, Justices of this place, that it may be reformed. You shall delay no man for lucre, or malice. You shall increase no Fees, but you shall be contented with the old Fees accustomed. You shall plead no foreign Pleas, nor sue any foreign Suits unlawfully to the hurt of any man; but such as shall stand with the Order of the Law, and your own Conscience. You shall seal all such Process as you sue out of this Court, with the Seal thereof; and see the Fees paid for the same. You shall not wittingly nor willingly sue, or procure to be sued, any false Suit, nor give aid or consent to the same, upon pain to be expulsed from this Court for ever. And further, You shall truly use, and demean your self in the Office of an Attorney within this Court, according to your learning and discretion.

So help you God.

The

The COURT of KINGS-BENCH

Comes next to be treated of;

Wherein we shall be the briefer, in respect that many Actions treated of at large before, in the Court of Common-Bench, are here also brought, and all that differences their Proceedings, is for the most part matter of Form.

THE Court of the *Kings-Bench*, consists of a Chief Justice, and three other Judges.

The subordinate Officers are as follow.

The Chief Clerk of the Court, or Master of the *Kings-Bench* Office, whose place is executed by his Secondary for the most part, or his Clerks under him, who write all Pleadings and Declarations, and other proceedings upon Record, and are accountable to him for the same.

His Deputy also signs all *Latitats*, which is the first Writ whereby a Suit is commenced; and Writs of *Alias, Pluries, Capias, Habeas Corpus, Procedendo, Habere facias possessionem, Certiorari, Distringas Ballivi, Distringas nuper Vic. Return Habendo, Capias in Withernam*, second Deliverance, and some others. He also keeps the Remembrances of all Records, whereby you may find out any Record with little trouble, especially if you know the Term when it was entred, and the Attornies name: and also all Writs returned, and *Posteas* and writs of Error are kept and filed in his Office, and also Common bails, and Special

cial bails, after they are accepted of by the Plaintiff or his Attorney, are likewise filed and entred upon Record in his Office.

Secondly, The *Custos Brevium*, his Office is to file all Original writs, and other Writs, wherein you proceed against any person you intend to outlaw. And also makes up all Records of *Nisi prius* for Trials at Assizes in the several Counties; and hath several Clerks under, who write the same; but many times the Plaintiffs Attorney, or the Defendents Attorney, if you go to Trial by *Proviso*, write the same that he may dispatch his Clients business the sooner, for which you pay for every press, which is to contain sixty line, 6 s. 6 d.

The Secondary to the chief Clerk, he always attends the sitting of the Court, for to examine business, which is referred to him by the Judges; and afterwards makes his report thereof, how the case stands. He also signs all Judgments and taxes Costs thereupon, and gives all Rules to answer and reply, and to go to Trial by *Proviso*, and many other; and usually resolves all doubts and questions of the other Clerks. And if any difference arise between any of the Clerks, for matters of Practice, it is usual with them that are fair Practisers, to refer the same to him to determine, and not to trouble the Court with unnecessary motions, and expend their Clients money in vain, which may that way be saved.

The Clerk of the Papers, his Office is to make up all special Pleadings and Demurrers, which the Plaintiffs Attorney most commonly speaks for, and afterwards by virtue of this Office gives a Rule upon the side of the Paper-book, for the Defendents Attorney to bring the same to him again to be entred within four days, or else Judgment to go by Default.

Keeper

Keeper of the Files of Declarations, with whom after they are ingrossed in Parchment, and continued on the back from the Term you declare, until it come to an Issue, are filed.

Keeper of the Sign and Seal for the Bills of *Middlesex*, who keeps a Book, containing the Plaintiffs and Defendents names, and where you may search for any appearance, or any Writ that is taken forth.

The Clerk of the Rules, whose Office is to attend the Court, and take short notes of all Rules and Orders that are made in Court (except those which belong to the Crown Office) and afterwards draws the same up and enters them in a Book at large, for which you pay eight pence, and for the Copy of every Rule four pence, if it be of the same Term, otherwise you pay eight pence. He also files all *Affidavits* that are used in Court, and hath the benefit of making Copies of them, for which you pay for each sheet four pence, and with him you are to give all Rules of course; as Rules upon *Capi corpus*, *Habeas corpus*, for a *Procedendo*, *Postea*, Writs of Inquiry, and such like.

Philizers, one for each County in *England*, who make out all Writs, wherein you intend to proceed by Original, and so to the Outlawry, except the Original it self, which you are to bespeak of the Cursitor of the County where you intend to lay your Action, in such manner as you bespeak Originals, which are made in the Common Pleas. And they have the benefits of all Writs and Entries thereupon and allow the chief Clerk nothing for the same.

The Marshal of the Kings-Bench, who hath the custody of all Prisoners who are sued in the Court, like to the Guardian or Wardens of the *Fleet*, which is a Prison properly belonging to the Com-

mon

mon Pleas and Chancery; and every one that is ſued and arreſted in this Court of Kings-Bench, is ſuppoſed to be in cuſtody: for you cannot declare againſt any man, who is arreſted upon a mean proceſs in any County or City; and he remain in priſon there, for want of Bail, until he be removed by a *Habeas corpus*, and always either he himſelf, or his Deputy, or Servants, attend the Court for that purpoſe, to take Priſoners, who are committed to their cuſtody.

Clerk of the Errors, he allows all Writs of Error, and makes *Superſedeas* thereupon, into what County you pleaſe to have them.

Cryers, who always attend upon the Court, either to call Nonſuits, give Oaths to Witneſſes, and Jurymen at Trials, or to any others whom the Judge ſhall direct; and at the end of every Term they do adjourn the Court.

Porter, who is to bring the Records out of the Office, when they be uſed in the Court.

This Court of Kings-Bench holds plea in all Actions of Debt, Detinue, Covenant, Account, and all Actions of the Caſe, either upon promiſes, or for ſcandalous words, or for ſpecial Nuſance, &c. Trover and Converſion, and many other like, &c.

The courſe of proceeding there is by way of *Latitat* as their firſt Proceſs, if the Action be brought, or the party to be arreſted in any other County than *Middleſex*.

If in *Middleſex*, then you take out a Bill of *Middleſex*, with any Clerk of this Office, for which you pay 1 *s.* 6 *d.* and then you are to carry it to the Under-Sheriff of *Middleſex* his Office, who is to make out a Warrant upon it, for which he hath 4 *d.* and then you employ what Bayliff you think

fit

fit for the arreſt, except your Warrant be directed to the Bayliff of any particular Liberty, and then you are to employ one of his Bayliffs.

If it be a *Latitat*, it ſuppoſeth a Bill of *Middleſex*, and that the party cannot be found in the County of *Middleſex*, as it appears by the latter end of the Writ, where it is ſaid, the Sheriff of *Middleſex* returns, that he is not found within his Bayliwick, but that he lies hidden in another County; and therefore command is given to the Sheriff of that other County, that he take him, &c.

This Writ or Bill of *Middleſex*, I conceive, is in the nature of the Original in the Common Pleas, which warrants the *Capias*, and happily may very anciently have been in uſe for that purpoſe; for that otherwiſe it were in vain to inſert thoſe words of the Sheriff of *Middleſex*.

A Latitat.

REX, &c. *Vic.* Canc. *ſalutem, cum Vic' noſtr.* Midd' *nuper præcipimus quod caperet* E. C. *generoſ. ſi invent. fuiſſet in Balliva ſua & eum ſalvo cuſtodiret. Ita quod haberet corpus ejus Coram nobis apud* Weſtm' *die Veneris prox. poſt octabis Purificat' beatæ* Mariæ *Virginis, ad reſpondend.* J. C. *gen. de placito tranſgr. Predictusque Vic' in* Midd. *ad diem illam nobis retornavit quod predict'* E. *non eſt inventus in Balliva ſua, ſuper quo ex parte pred'* J. *in Cur' noſtra Coram nobis ſuffic' teſtat' eſt quod predictus* E. *Latitat & diſcur' in Com. tuo. Ideo tibi præcipimus quod capias eum ſi inveni' fuer' in Balliv. tua & eum ſalv. cuſtod. Ita quod habeas corpus ejus Coram nobis apud* Weſtm. *die Jovis prox. poſt menſem. Paſc. ad reſpondend' præfat.* J. *de placito pred. Et habeas ibi tunc hoc breve* T. O. B. *apud* Weſtm. xij. *die* Febr. *anno Regni noſtri* xvj.

This Writ is 4 *s*, 1 *d*.

" This was the ancient form, and this Writ ſerv-

" ed

"ed in all cases, never expressing any causes what-
"soever, but only Trespass, until by a late Act of
"Parliament it was ordained, that no Writ of
"Trespass should hold the Defendent to any Bail,
"any further than an apparance; and every Writ
"should express the cause of the Action, as the
"Common Pleas Writs do, and all other Writs
"ought to do.

"Since they have in their Bill of *Middlesex*, and
"also in their *Latitat* and *Alias*, &c. added an *Ac*
"*etiam* after these words (*de placito transgressionis*)
"comprehending the special matter or cause of A-
"ction in this form: *Ac etiam billa prædict' quer' ver-*
"*sus prædict' def' pro viginti libris de debito secundum*
"*consuetudin. Curiæ nostræ coram nobis exhibendam.*
"Or if it be any other special Action, or matter re-
"quiring good Bail, they write it in the Writ, as *Ac*
"*etiam billa pro quadraginta libris super assumptionem*
"*vel promissionem*; Or, *Pro conventione fracta ad damn'*
"*ipsius quer.* 100 l. Or, *Pro conversione & dispositione*
"*bonorum & catallorum ad damnum ipsius quer.* 20 l. or
"the like, as the nature of the Action requires, spe-
"cifying the cause, that so the Sheriff may take
"Bail accordingly. The form of the *Alias capias*,
"if the Defendent be not taken upon the *Latitat*, is
"thus:

Alias Capias.

R. *EX, &c. Vic'* Canc. *salutem. Præcipimus tibi sicut alias tibi præcipimus quod capias* M. T. *si invent. sit in Balliva tua & eum salvo custod. ita quod habeas corpus ejus coram nobis apud* Westm' *die Jovis prox' post* xv. *S.* Trinitatis *ad respondend'* R. C. *de placito transgr. Et habeas ibi tunc hoc breve*, T. &c.

This Writ is 13 *d.*

Plures Capias.

R. *EX, &c. Vic.* Canc. *salutem. Præcipimus tibi sicut plur. tibi præcipimus quod capias* G. L. *si invem.*

corpus

fuit in balliva tua & eum salvo custod. Ita quod habeas corpus ejus coram nobis apud Westm. *die Veneris prox. post mensem. Pasch. ad respondend.* W. C. *de placito transgr. Et habeas ibi tunc hoc breve* T. *&c.*

Bill of *Middlesex.*

Midd. ss. *Præc. est Vic. quod capiat* A. B. *&c. Et eum salvo custod. ita quod habeat corpus ejus coram nobis apud* Westm. *die Mercur. prox. post mensem Paschæ ad respondend.* C. D. *de placito transgr. Et quod habeat ibi hoc præcept. &c.*

Per Billam. HENLEY.

Charge 13 *d.*

These Writs you may have renewed every Term, until you get the party to be arrested: But if the *Latitat* remain unrenewed for five Terms, after you have taken it out, then you must have a *Latitat de novo*, for that you cannot renew the old.

"Note, you may renew your Bill of *Middlesex*, "as you do the *Latitat*, if it be within the compass "of four Terms after the first Writ is taken out, "the charge of the *Alias-Bill* is 8 *d.* You must "write in the beginning of the Writ, *Præcept. est "Vic. sicut Alias fuerat præcept.* all the rest as in the first Writ.

Upon any of these processes, if any of the parties to be arrested, dwell within a Liberty, you must get the Sheriff to return a *Mandavi Ballivo* to your process, and upon that the course is to have a *Non omittas*, &c. for which you pay 2 *s.* 4 *d.*

Where upon this, or any the other Writs, the party or parties be arrested, and have put in Bond for his appearance to the Sheriff, you must pay the Sheriff 4 *d.* and he will return you a *Cepi corpus*; upon which, if the party do not appear at the return of the Writ, you may give the Sheriff a Rule to bring in his body, on pain of 40 *s. &c.* which costs

4 *d.*

4 *d.* and then if he do not come in and appear, you may have a *Habeas corpus* upon the *Cepi corpus*, which coſts 2 *s.* 4 *d.* If the Sheriff will not return this Writ of *Habeas corpus*, you may amerce him as before: If he doth return the Writ, and bring not in the body, he can return nothing but *Languidus in priſona*; and upon that you may have a *Duces tecum licet languidus, &c.* upon the like price, or elſe after the party is arreſted, you may have a *Habeas corpus*. At the return of all, or any of theſe, you may amerce the Sheriff, and he ſhall pay it after thoſe Rules given in the Kings-Bench.

If you will eſtreat your amerciament into the Crown-Office, the charge of every Rule eſtreated is 2 *s.* 4 *d.* uneſtreated 4 *d.* and in this courſe you may both amerce the Sheriff, and proſecute till ſuch time as he doth appear; but if there be any great amerciament, the Defendent will appear for fear the Sheriff ſue his Bond. And after the amerciaments are returned into the Crown-Office, if they be not certified and returned into the Exchequer, which is once in every half year, where they are eſtreated before that time; if you be ſued upon the Sheriffs Bond, you may upon motion of the Court, if the Plaintiffs Attorney (to whoſe Client the Sheriffs Bond is commonly aſſigned) will not conſent otherwiſe, that you are content to appear, as of the ſame Term the firſt Writ was returnable, and to accept of a Declaration, and not to delay the Plaintiff in his Suit: the Court will uſually order the Suit upon the Sheriffs Bond to ſtay; or if the amerciaments be eſtreated, then upon the ſame offer, and alſo to take off thoſe amerciaments, the Court will order the like. And when any one intends to appear, he muſt file a Bail with the Maſter of the Office, fairly written in Parchment, the form whereof is as follows.

If it be a common Bail, thus:

A. B. de C. in Com. D. Gen. traditur in Ballium, super cepi corpus.

Johanni Doe *de* London, *Yeom.* & Richardo Roe *de eod. ad sect. E. E. quer.*

If special Bail upon a *Habeas corpus*, then you must say (such an one) naming the Plaintiff, is delivered unto Bail upon a *Habeas corpus*, to such persons, naming his Bail (instead of *John Doe* and *Richard Roe*) at the Suit of the Plaintiff, in the plaint not naming the Defendent, as in the common Bail, which must also be fil'd with the Master of the Office.

In what Cases you are to require, and may stand upon good Bail.

f. 299. 362. IF the Defendent do appear, and he stand indebted to your Client, either by bond, bill or otherwise, to the value of 20 l. or 10 l. you may force him to put in good bail, if you mistrust his sufficiency.

But if it be in an Action of the Case for words, though the party be nothing worth, and you are likely to recover great damages, yet can you very hardly hold him to good bail: yet in some cases it hath been observed, that good bail was required; as where one had made a Libel against another, who was a Magistrate.

In an Action of *Ejectione firmæ*, and in an Action of Trespass, good bail is not insisted on, nor required, except in some special cases, then the Court will order that there be special bail.

Nor is there good bail required against Executors or Administrators, in any Action brought against them, unless in such case where you can directly prove they have wasted the Goods of the Testator.

" By the Rules of this Court, special bail is requi-

" red

"red in all cauſes of removal, be it by *Habeas cor-*
"*pus*, Writ of Priviledge, *Certiorari*, or the like.

"Upon a Bail put in upon a *Habeas corpus* re-
"turnable *immediatè*, if it be *Hillary* or *Trin.* Term,
"and the Declaration be delivered eight days be-
"fore the end of the Term, then the Defendent
"muſt plead to enter; but if it be in *Michaelmas-*
"Term, and the Declaration be delivered before
"*Craſtinum animarum*, or in *Eaſter*-Term before
"*Menſem Paſch.* then the Defendent muſt plead to
"try the ſame Term.

"If one be brought into this Court by *Habeas*
"*Corpus*, and doth put in bail here, the bail is liable
"to all Actions, which the Plaintiff, at whoſe Suit
"he is brought in, ſhall bring, wherein he ſhall de-
"clare againſt the Defendent at any time within
"three Terms next following, but not afterwards.

If bail be put in, either common or ſpecial, at another mans Suit, a Stranger may upon this bail put in Declaration; but then he muſt declare of the ſame Term the bail was put in, which is not uſed in the Common Pleas. But the party at whoſe Suit the Defendent was arreſted, may declare the next Term after the Defendents appearance upon the bail.

But if it be ſpecial bail that he put in, no Stranger ſhall take the benefit of it, although he declare of the ſame Term.

If the Defendent appear in his proper perſon, you muſt declare within three days, otherwiſe he will have coſts.

If you have declared, and do not call for anſwer nor enter within three Terms after the appearance of the Defendent, the Plaintiff ſhall be nonſuited, and the Defendent ſhall have coſts.

And if you arreſt one in the County upon m[illegible]

proceſs, and he is in the Sheriffs cuſtody there for want of bail, for the ſpace of three Terms, and you do not remove him into the cuſtody of the Marſhal, where he muſt be, before you can declare againſt him, the party arreſted may have a *Superſedeas*, and file common bail.

The Declarations are uſually drawn by the Clerks of the Office; for they that are Clerks of the Office, are to do the buſineſs of thoſe which are Attorneys at large, and their names are only uſed as Attorneys: but thoſe Clerks are, in right of their being Clerks of the Office, Attorneys of the Court.

Their manner of practice is ſomething different in reſpect of the delivery of Declarations, from that in the Common Pleas.

In the Common Pleas, the Plaintiffs Attorney or Clerk hath the benefit of both the Copies of the Declaration, both on the part of the Plaintiff and Defendent.

But in the Kings-Bench, the Declaration being drawn by the Plaintiffs Clerk, the Defendents Clerk calleth for it, or elſe it is delivered unto him, and he maketh a Copy of it, and hath the benefit of it; and then the next Term after, or ſo ſoon as the Plaintiffs Clerk calleth for anſwer, is to plead or confeſs the Action, or let it go by default, &c.

Their Declarations that are drawn, they ingroſs ſeverally in pieces of Parchment, and upon the back of them they enter the Continuances, from the Term that is within written, unto the very Term that they either confeſs in the Action, or plead to Iſſue, and that the Iſſue be entred upon Record; and after Iſſue is joyned, many times they defer the entring of the ſame, till the Cauſe be tried, which is otherwiſe in the Common Pleas; which is beneficial both to the Plaintiff and Defendent, being they may

may in the mean time agree the buſineſs, and ſo ſave that charge.

In their Declarations, they begin with the name of the Plaintiff, and ſay, that he complains of the Defendent, very ſeldom naming of what place, &c. unleſs upon a Bond where the *Alias dictus* muſt be obſerved, in the cuſtody of the Marſhal, &c. for ſo the Declaration ſuppoſeth every perſon they declare againſt.

When they come to mention the Bond, Indenture, or Bill, if in an Action brought upon any Specialty, there they have (*Profert hic in Curia, &c.*) in the middle of their Declaration, whereas in the Common Pleas they conclude their Declarations with it; at the cloſe of their Declarations they add underneath:

J.B *pro quer.* } *Pleg. de proſ.* { *Johannes Doe,* &
C.B. *pro Defend.* } { *Richardus Roe.*

"A Plaintiff after plea pleaded, or before, after "the ſecond Term ſhall not add a new Count to his "Declaration, as an *Indebitatus aſſumpſit*, or the like, "upon pretence of mending his Declaration.

"The Plaintiff may amend his Declaration in "matter of Form, after a general Iſſue pleaded be"fore entry, without paying Coſts, or giving Im"parlance; but if he mend in ſubſtance, to pay Coſts "or give Imparlance at his election: but if he a"mend in ſubſtance after a ſpecial plea pleaded, to "pay Coſts though he would give Imparlance.

"One may not declare againſt one that is not ei"ther in *Cuſtodia Mareſcalli*, or that hath not filed "his bail, or that is not a priviledged perſon in this "Court; for no other ways can one be ſaid to be "preſent in Court, and ſo the Court hath no conu"ſance of the matter.

"Where the Plaintiff doth declare as Executor "or Administrator, he ought to set forth the Pro- "bate of the Will, or the Letters of Administrati- "on granted to him, in his Declaration, otherwise "the Declaration is not good, but the Defendent "may demur upon it, for without shewing them they "do not intitle themselves to the Action brought, "for it doth not appear to the Court that there was "such a Will made, or that there were such Letters "of Administration granted.

"Declarations which are grounded upon Origi- "nal Writs, (as all Declarations in the Court of "Common-Pleas are) if they be faulty, they cannot "be amended, but Declarations grounded upon a "Bill, as the Declarations in the Court of King's- "Bench are, are amendable if they be faulty; For "Declarations grounded upon Originals must agree "with the Originals; and if they be faulty, it is in- "tended that the Original upon which the Declara- "tion is grounded is also faulty, and so the Plaintiff "must purchase a new Original.

"Note, where one may declare by the Common- "Law, there he shall not declare upon a special Cu- "stom, because the Common-Law is to be prefer- "red, and therefore if the Plaintiff do declare other- "wise, the Declaration is not good, if the Defen- "dent will demur to it; but if he waive his advan- "tage, and plead to Issue, and a Verdict is found for "the Plaintiff, he shall not move this Matter in ar- "rest of Judgment.

"Note also, in all Actions of Trespass, *Quare* "*clausum fregit*, the Plaintiff must in the Declaration "mention the place certainly where the Trespass "was committed, to prevent the use and necessity "of the Common Bar, and new Assignment.

The

The many and ſeveral Actions of the Caſe before mentioned, in the practice of the Common Pleas, are much uſed likewiſe in the practice of this Court; and in thoſe Actions they may proceed to Outlawry by Original, and ſo through their *Philizers* Office; in which Caſes, or in Treſpaſs, or Treſpaſs of Aſſault and Battery, if a man be outlawed in that Court he is half undone, if he be a poor man; for beſides that, it coſts him 6*l.* 13 *s.* 4 *d.* or upwards, to reverſe the Outlawry; he muſt, although he live an hundred, or an hundred and fifty miles diſtant from *London*, come in perſon, (if he be able) to reverſe it, and beſides muſt procure good bail; and in caſe he be impotent that he cannot travel, then there muſt be *Affidavit* made thereof before a Judge; which done, he may reverſe it.

"The Court will not reverſe an Outlawry, al-
" though both the parties conſent to it, *viz.* the
" party outlawed, and the party at whoſe Suit he is
" outlawed, except there be Error aſſigned in the
" Outlawry; for matters of Record are not to be
" deſtroyed without ſufficient cauſes; and the Out-
" lawry alſo doth concern the King as well as the
" parties, and therefore not to be overthrown with-
" out cauſe.

" An Outlawry that doth not expreſs that the
" party outlawed was proclaimed, as he ought to be,
" is not good, but may be reverſed, becauſe it is de-
" fective in matter of ſubſtance.

One may proceed to Outlawry in this Court, as well as in the Common Pleas, in all Caſes, except in theſe four,

1. Debt.
2. Detinue.
3. Covenant.
4. Account.

But it is ſeldom made uſe of but upon good occaſion: that is to ſay, when the Defendent hath a good perſonal Eſtate in Debts, Cattel, or Stock in his grounds, and is hard to be taken and arreſted; for otherwiſe Outlawries are but meer Scare-crows, to diſable both the Plaintiff and Defendent, in putting them to unneceſſary charge, whereas upon a *Latitat* you may procure a man to be arreſted preſently, and make him put in good Bail, which is all you can do upon an Outlawry, after three Terms ſpace. And beſides, upon a *Latitat*, you may declare againſt the Defendent in as many Actions as you pleaſe; whereat in the Common Pleas you muſt have for every Action one Original, and if it be a Debt which exceeds 40 *l.* you muſt pay as before is told you 6 *s.* 8 *d.* fine, and if 100 *l.* you pay 10 *s.* fine, and ſo proportionally; and as ſoon as you beſpeak your Original, before you have any benefit of your Suit, whereas no fine at all is paid in the Kings Bench, until the filing of the Declaration, and then you muſt pay 5 *s.* in the hundred. And in the Kings-Bench, the Plaintiff hath longer time to declare than is allowed in the Common Pleas, (if the Defendent do not appear in perſon) and then you muſt declare within three days after.

How to draw up an Iſſue in the Kings-Bench.

HAving ſhewn how to proceed ſo far as Declaration in the Kings-Bench, we will now ſhew how to draw up an Iſſue after pleading, and ſo go to Trial.

An Iſſue in Treſpaſs.

Suſſex. MEmorand. quod al. ſcilicet Termino Paſc. ult. præterito coram Dom. Rege apud Weſtm. venit R.C. per G.S. Attorn. ſuum. Et protulit hic

hic in Cur. dicti Domini Regis tunc ibid. quandam billam ſuam verſus J. P. & R. A. in cuſtod. Mar. &c. de placito tranſgr. Et ſunt pleg. de proſequend: ſcilicet Johannes Doe *&* Richardus Roe, *quæ quidem billa ſequitur in hæc verba. ſſ.* Suſſex *ſſ. R. C. queritur de J. P. & R. A. in cuſtod Marr. Mareſc. Domini Regis coram ipſo Rege exiſten. de eo quod ipſi decimo die Aprilis Anno Regni Domini* Caroli *Secundi, nunc Regis* Angl. *&c. viceſimo primo vi & armis, &c. Clauſum ipſius R. C. videl. unum Clauſum vocat. L. in Parochia de C. in Com. prædicto fregerunt & intraverunt, & herbam ſuam ib. nuper Creſc. ad valentiam decem librar. cum quibuſdam Averiis, videlicet, Equis, Bobus, Vaccis, Porcis, & Bidentibus depaſti fuerunt, conculcaverunt & conſumpſerunt, & alia enormia ei adtunc & ib. intulerunt, contra pacem dicti Domini Regis nunc, ad damn. ipſius R. C. centum librarum. Et inde producit ſectam, &c. Et modo ad hunc diem, ſcil. diem Veneris proxim. poſt Craſtinum S.* Trinitatis *iſto eod. Termino, uſque quem diem prædict. J. P. & R. A. habuerunt licent. ad billam prædictam interloquend. & tunc ad reſpondend. &c. coram Domino Rege apud* Weſtm. *ven. tam præd. R. C. per Attornatum ſuum præd. quam præd. J. P. & R. A. per J. Attorn. ſuum. Et iidem J. P. & R. A. Defend. vim & injur. quando, &c. Et dicunt quod ipſi non ſunt inde culpabiles, & de hoc ponunt ſe ſuper Patriam, & prædict. R. C. ſimil. &c. Jam ven. inde Jur. coram Domino Rege apud* Weſtm. *die Mercurii proxim. poſt tres ſeptimanas S.* Trinitatis. *Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Idem dies dat. eſt partibus præd. ibid. &c.*

"When you have Iſſue joyned, and intend to pro-
"ceed to Trial, whether it be in the City, or a Tri-
"al at *Weſtminſter* upon an Iſſue laid in the County
"of *Middleſex*, or for the Country Aſſizes, you
"muſt make out your *Venire facias* to the Sheriff
"of

" of the City or County where the Action is laid, to " return you a Jury. The form of a *Venire facias* is " thus:

A Venire Facias *to ſummon a Jury in the Kings-Bench.*

CAROLUS Secundus, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defenſor, &c. Vic. ſalutem. Præcipimus tibi quod Venire Facias coram nobis apud Weſtm. *die, &c. duodecim liberos & legales homines de vicinet. de J. in Com. tuo, quorum quilibet habeat viginti libr. terræ, tenementorum vel reddit. per annum ad minus, per quos rei veritas melius ſciri poterit. Et qui nec R.C. quer' nec J. P. & R. A. aliqua affinitate attingant ad faciend. quandam Jur' inter partes prad. de placito tranſgr. quia tam iidem J. P. & R. A. quam prad. R.C. inter quos inde contentio eſt, poſuerunt ſe inde in Jur. ill. Et habeas ibi nomina Jur. Et hoc brev. Teſte, &c.*

" If the Defendent be an Alien, then you muſt " have a Jury *de medietate Linguæ*, one half Engliſh, " the other half Aliens; then you muſt have this " clauſe in the Writ.

A *Venire* for a Party Jury.

" *Quorum una medietas ſit de Indigenis, altera vero* " *medietas de Alienigenis.*

" If you are for the Defendent, and will bring a " Cauſe to Trial by *Proviſo*; when the Plaintiff will " not proceed, your Writ runs thus:

Venire Facias cum Proviſo.

" After you come to *in Jur. ill.* ſay, *Proviſo ſemper* " *quod ſi duo brevia inde tibi venerint unum tantum il-* " *lorum exequaris & retorn.*

" Upon this Writ the Sheriff will return you a " Jury in a pannel annexed to the Writ, then you " are to make a Writ of *Diſtringas Jur.* where you

" are

" are to inſert the Names and Additions of all the " Jurors returned upon your *Venire facias*.

" If the *Diſtringas* be in *Middleſex*, then your " Writ muſt be, *Si prius, &c. apud* Weſtm. *in Magna* " *Aula placitorum ibid.*

" If your *Diſtringas* be in another County, for a " Trial at the Aſſizes it muſt have this alteration, " *Vel coram Juſticiariis noſtris ad Aſſiſas in Com. tuo* " *tenend. aſſign. ſi prius die, &c. apud Caſtrum W. in Com.* " *tuo per formam Statuti in hujuſmodi caſu nuper edit.* " *& proviſ. venerint ad faciend. &c.*

" The *Diſtringas Jur.* being made and ſealed, you " muſt likewiſe get the Sheriff to return; and then " having your Record alſo ingroſſed and ſealed, you " are ready for Trial; only preparing *Breviats* to " inſtruct your Counſel well; and provide your Wit- " neſſes ready, for whom you ought to have a *Sub-* " *pœna.*

When the Plaintiff and Defendent are at iſſue, the Defendents Clerk hath the benefit (as before of making the Declaration) ſo of making the Copy of the Iſſue for the Defendent, which is otherwiſe uſed in the Common Pleas.

By the Rules of the Court, if the Plaintiff will not try his Iſſue after it is joyned, in ſuch time as he ought by the courſe of the Court to do, the Defendent may try it by *Proviſo*, if he will; that he may free himſelf if he can of the danger and trouble he may be ſubject to, by the depending of the Action brought againſt him, and to recover his coſts for his unjuſt vexation. This is given by the Statute.

" A Judgment may be entred as to one part of an " Iſſue, and a *Nolle proſequi* to another part of the " ſame Iſſue; but this is only where the Iſſue may " be divided.

" Where there is a Demurrer to one part of an " Iſſue,

'Iſſue, and the other part of it remains to be tried 'by a Jury, the Trial of it may be either before or 'after the arguing of the Demurrer, at the election 'of the Plaintiff; for the Demurrer and the Iſſue 'have no dependency one upon the other; for one 'part concerns matter in Fact, and the other matter 'in Law.

'Every Iſſue ought to be joyned upon the moſt 'material thing in the cauſe depending, that all the 'matter in queſtion between the parties may be 'tried.

Of ſpecial Pleadings and Paper-Books.

IF there be ſpecial Pleadings in any action by the Plaintiff or Defendent, which either comes to Iſſue, or that there be a Demurrer, then they carry the whole Book to the Clerk of the Papers, who giveth a Rule to the Defendent in the margin of the Book, to joyn in Iſſue, or in Demurrer, and he maketh up the Books, and is paid 8 *d.* a ſheet for the ſame; which is otherwiſe in the Common Pleas, for there the Plaintiffs Attorney hath that benefit.

'A general Demurrer to a Declaration is no Pa- 'per-Book, a ſpecial Demurrer is.

'A Plea or Demurrer to a *Scire facias* is no Paper- 'Book, but the next Term after the laſt *Scire facias*, 'it is demanded to be one; *Tamen quære.*

'If you plead ſpecially, you muſt take notice of 'Trial from the delivery of the Paper-Book, al- 'though you do not joyn in Iſſue till four days after, 'by ſetting your hand, and paying for entring the 'Plea.

'You muſt alſo take notice from the time of the 'delivery, if you do upon advice wave your ſpecial 'Plea, and give the general Iſſue.

'But if it be a Demurrer though purpoſely for 'delay, no warning is to be given or taken until Iſſue 'be joyned.

'After

'After the Rule to return the Paper-Book be 'out, you may refuse to accept it without a new 'Rule, but if it be within one day of the time, not; 'but then you may detain it four days inclusive.

'In all special Pleadings, where the Plaintiff takes 'Issue upon the Defendents pleadings, or traverseth 'the same, or demurreth, so as the Defendent is 'not thereby let in to alledge any new matter, there 'he may make up the Paper-Book without giving 'a Rule with the Secondary to rejoyn.

'Every Plea must be pleaded either in Bar to the 'Action brought, or in abatement of the Writ up- 'on which the Action is framed, otherwise it is but 'a discourse and not a Plea, because the Plaintiff 'cannot take an Issue upon it, and therefore if the 'Plaintiff do demur upon it, and his Demurrer be 'adjudged good, he shall have Judgment against the 'Defendent for want of a Plea.

'A Plea in abatement of the Writ, ought not to 'be received after the Defendent hath imparled, for 'by imparling he admits the Writ to be good; yet 'if it be received, and the Plaintiff doth demur to 'it, the Demurrer is good.

'A foreign Plea is to be put in upon Oath of the 'Defendent, that is, he must swear his Plea is true, 'or else such a Plea is not to be received.

'A foreign Plea is when the Defendent doth 'plead such matter, that if it be true, the cause can- 'not be tried in this Court; and in regard that 'thereby the Defendent doth endeavour to hinder 'the proceedings of the Court, and to delay the 'Plaintiff, therefore the Court will make him swear 'his Plea to be true that the Court may not be de- 'luded, nor the Plaintiff trifled with by a false Plea, 'and if he will not swear his Plea to be true, the 'Plaintiff may enter Judgment for want of a Plea.

'If

'If the Plaintiff do alter his Declaration after 'the Defendent hath pleaded to it, the Defendent 'may alter his Plea.

'Where the Defendent is not constrained to 'plead a special plea, he may plead the General Issue 'proper for the Action brought and give the special 'matter in evidence.

'If the Defendent plea doth not answer all the 'matter contained in the Plaintiffs Declaration, it is 'no good plea, but the Plaintiff shall have his Judg-'ment intire against him for want of a plea.

Of Trials, and the Proceedings thereunto.

'IF it be an Issue of any former Term, that is en-'tred upon the Roll, or of the same Term, then 'if you will have a Record of *Nisi prius*, you must 'have it made by the *Custos Brevium* of this Court, 'who keepeth particular Clerks for that purpose; 'for you are to pay him for them, although for ex-'pedition the Attorney or Clerk most usually makes 'them himself, and then the *Custos Brevium* seals 'them.

'There must be eight days notice exclusive gi-'ven to the Defendents Attorney of any Trial in '*London* and *Middlesex*, or at the Assizes if held 'within 40 miles of the City of *London*.

'If any of the Defendents Witnesses, to be used 'at a Trial do live above forty miles distant from '*London*, the Plaintiff by the Rules of the Court 'ought to give the Defendent fourteen days notice 'of the Trial.

'If a Cause have continued four Terms without 'prosecution before Issue joyned, the Defendent is 'to have a Terms notice to plead, &c. before Judg-'ment can be entred by Default; If after Issue 'joyned, a Terms notice before the Trial.

'If

'If notice of Trial be given in *London* or *Middlesex*, and the cause be not entred in the Lord Chief 'Justice his Book two days before the day that it is 'to be tried, the Marshal will enter a *Ne recipiatur*, 'at the request of the Defendent, or his Attor-'ney.

'If the Plaintiff give notice to the Defendent 'that he will try his cause on a certain day within 'Term, although it be not tried at the day appoint-'ed, yet he is not bound to give new notice of a 'Trial, but may try it the next sitting in the same 'Term.

Of Verdicts.

'WHere the Court doth direct the Jury to find a special Verdict, one of the Councel 'on both parts are to agree upon the notes of it, 'and to draw them up, and to set their hands to 'them, and to deliver them in unto the Jury in con-'venient time sitting the Court, or else the Court 'will take a general Verdict. The Court will not 'take a Verdict by default, except the Plaintiffs 'Councel do pray it.

'The Chief Justice at *Westminster-Hall*, or *Guild-'Hall*, or any Judge of Assize, may in some special 'case take a Verdict out of Court, which Verdict is called a Privy Verdict, but then the Verdict must 'afterwards be pronounced in Court.

'If one of a Jury that found a Verdict were outlawed at the time when the Verdict was found, the Verdict is not good, but may be reversed by Error, for an outlawed person is not *probus & legalis homo*, as every Jury-man ought to be.

'After Verdicts, and that they have the *Postea's* returned, and that the Master of the Office hath signed costs, (which he doth, as he doth all other business by his Secondary) then they enter up

'their

'their Judgments, every Clerk his own, and so he 'maketh out his Executions, either against the body, 'which is commonly called a *Capias ad satisfaciend.* 'or else against the Goods, which is commonly cal-'led a *Fieri facias*; or else against the Lands and 'Goods, which is called an *Elegit*; but if you once 'charge the body in Execution, you have no remedy 'against the Goods or Lands, and if you execute 'an *Elegit* and file it, you are barred from taking out 'any other Execution upon that Judgment after-'wards.

Of arresting Judgment.

'AFter a Verdict, by the course of the Court there must be a Rule given (which is out in 'four days) before the Plaintiff can enter his Judg-'ment, or take out Execution, which time is given 'for the Defendent to move in arrest of Judgment, 'if the cause be tried within Term, the Rule may 'be given the same day that the Trial is; if the cause 'be tried the sitting after Term, or at the Assizes, 'the Rule cannot be given until the first day of the 'ensuing Term.

'No Council ought, by the Rules of the Court, 'to move any thing in arrest of Judgment, except 'the Roll whereon the Judgment is entred, or the '*Postea* be in Court.

'It is sufficient matter for the Defendent to move 'in arrest of Judgment, to prove that he had not 'sufficient notice given unto him of the Trial, ac-'cording to the course of the Court, *viz.* to stop 'that Judgment, and to obtain a Rule for a new 'Trial upon the old pleadings.

'One may speak in arrest of Judgment, given up-'on a *Nihil dicit*, after the Writ of Inquiry of Da-'mages; upon which Writ the like Rule is to be gi-'ven, as on a *Postea*, which is mentioned before.

'A

'A Judgment ought not to be entred until the 'costs be taxed, and the Judgment signed by the Se-'condary of the Office.

'A Judgment upon a *Nihil dicit*, ought not to be 'entred by the Rules of the Court, until two Rules 'have been given in the Office for the Defendent to 'plead.

Of Reviving Judgments by Scire facias.

'IF a Judgment be obtained, but the Plaintiff doth 'take out no Execution upon this Judgment, in 'a year and a day next after the Judgment given, he 'cannot then take out Execution until he hath re-'vived this Judgment by a *Scire facias*, which *Scire 'facias* is to give notice to the Defendent, to shew 'cause why the Plaintiff should not take out Exe-'cution upon the Judgment, which Writ he may 'have without a motion by the course of practice 'of the Court; but if there be a Judgment above 'ten years old, upon which no Execution hath been 'taken out, such a Judgment cannot be revived by 'a *Scire facias*, without a motion and leave of the 'Court.

'If the Sheriff return a *Scire feci* upon a *Scire fa-'cias*, and the Defendent doth not appear and plead, 'the Plaintiff may enter up Judgment by Default; 'if the Sheriff return a *Nihil habet* upon your *Scire 'facias*, you must give him an *Alias Scire facias*, and 'get it returned in the same manner, and when you 'have two *Nihils* returned, it amounts to as much 'as a *Scire feci*, and the Plaintiff may enter up 'Judgment of course, and sue out what Execution 'he pleaseth.

'There must be fifteen days between the Teste 'of the first *Scire facias* and the Return of the se-'cond exclusive, and likewise seven days between 'the Teste and Return of one of the *Scire facias*

'(it matters not which) and eight days between the 'Teste and Return of the other, which makes up 'the fifteen days; and in strictness each *Scire facias* 'should lie with the Sheriff seven days before the 'Return.

'A *Scire facias* may be traversed before Judgment 'given upon it, but after a Judgment there can be 'no traverse, for then it is too late to plead to it, but 'a Writ of Error may be brought to reverse the 'Judgment given upon the *Scire facias*, if the *Scire* 'facias was not good, upon which it was grounded.

'If one do not proceed upon a *Scire facias* within 'a year and a day after it was taken out, he cannot 'after that proceed upon that Writ, but must sue 'out a new *Scire facias*, for the old Writ is discon-'tinued.

'If a *Scire facias* be brought against Bail, upon a 'Recognizance in a Writ of Error generally, with-'out expressing the action or the condition of the 'Recognizance, there the *Scire facias* must be re-'turnable on a general Return *ubicunque*; but if the 'Action and condition of the Recognizance be set 'forth in the *Scire facias*, and appears to be by Bill, 'then the *Scire facias* must be returnable at a day 'certain in Court.

This Court of Kings-Bench holdeth Pleas of the Crown, and to that purpose there is an Office called the Crown-Office, and the Master of it is called the Clerk of the Crown; and here may be brought Indictments of all manner of Treasons, Murder, Felony, breaches of the Peace by Battery, &c. breach of the good Behaviour, for Perjury, all publick Nuisances, Appeals in case of Murder, and here likewise Informations upon penal Statutes are brought; and here Issue out *Certioraries*, to remove Indictments from private Sessions, and hither are all Convicts certified.

They

They have belonging to this Office a Secondary, who sits in Court, and takes notice of what Rules are made on the Kings side. They have likewise several Attornies of that Office divided amongst them, who intermeddle not with any thing relating to the Court, other than in their own Office.

Thus have we briefly shewn you the usual practice of the Kings-Bench, from the *Latitat* which is their leading process to execution; we will in the next place give you a Table of the Fees of this Court.

Fees of the Kings-Bench.

A Note of FEES due, and time out of mind used to be paid to the Prothonotaries, or chief Clerks of the Court of Kings-Bench, *and to their Clerks, as the same was presented upon Oath by virtue of a Commission in* Apr. 1630. *by twenty nine Attorneys of the same Court, and hitherto taken.*

Writs.

For a Latitat.
Supersedeas.
Exigent in Appeal.
Distring. in Attaint.
Habeas corpus.
Certiorari.
Procedendo.
Elegit.
Subpœna.
Return. habend.
Withernam.
Second Deliverance.
Restitution.
Scire Facias.
Diminution.
Libello habend.
Prohibition.
Consultation.
Propriatate probanda.
Distring. in Detinue.
Inquir. de valore.
Resum.
Reattachment.
Ve. fa. defend. in Audita querela.
Habere fac. seisinam, & possession.
Respons. in Attaint.
Vend. Expon.
Bre. Expo.
Mittimus.

All these are accountable for to the Prothonotaries, *viz.* for every one 2 *s.* out of which they allow their Clerk for writing 4 *d.*

Venire facias.	*Snr. cepi corp.*
Distring. Jur.	*Averm. vers. vic.*
Al. & plur. cap.	*Fieri facias.*
Ca. sa.	*Test. fi. fa. & ca. sa.*
Inquir. de damnis.	*Distr. nuper vic.*
Habeas corpus.	*Non omittas.*

For every of these besides the Seal, 6 *d.* And for every *Deliberat. de Recordo*, 4 *d.* And for the *Jurat.* of the *Distr.* of *Nisi prius*, 4 *d.* But all these have been alwaies to the Prothonotaries Clerks, and are not accounted for to the Prothonotaries.

In every action wherein the Plaintiff recovereth Damages to the value of 13 *l.* 6 *s.* 8 *d.* he paid 12 *d.* in the Pound for Damage-clear, when the Judgment is signed.

Kings Bench Fees for Entries.

For every Deed, how short soever, 2 *s.*
For every Action of Tresspas, 1 *s.*
For every *Not guilty*, 1 *s.*
For every Justification in Tresspas, 2 *s.*
For every Replication, 2 *s.* 8 *d.*
For every Action of the Case, not above three sheets, 2 *s.*
For every general Issue to it, 1 *s.*
For every *Ejectione firmæ*, 2 *s.*
For every Declaration in Appeal, 2 *s.*
For every general Issue therein, 2 *s.*
For every Recogn. *Snr. Hab. corp.* for every Defendent severally, 2 *s.*
For every Deposition upon all Prohibitions, 2 *s.*
For every Judgment by circumst. 4 *s.*
Out of which the Clerk is allowed, 8 *d.*

For

For every other Judgment, 2 s.
Whereof the Clerk is allowed, 4 d.
For every Diſmiſſion, 2 s.
For every Commitment in execution, 2 s.
For every Satisfaction, 3 s.
For every Apparance recorded, 2 s.
For every *Non. prof.* 2 s.
For every Action of Debt, Detinue, or Treſpaſs, 1 s.
For every general Iſſue therein, 1 s.
For every condition performed, 2 s.
For every Replication to it, 1 s.
For a Writing denied, and keeping of the Writing, 2 s.
For every Juſtification in Battery, 2 s.
For every *Audita Querela*, how ſhort ſoever, 2 s.
For every ſpecial Imparlance, 2 s.
For every general Imparlance upon the Plea-roll, 1 s.
For every default upon Record, 2 s.
For ſuch a Suggeſtion upon a Prohibition, how ſhort ſoever, 2 s.
For every Recognizance to it, 2 s.
For every Writ of Error, how ſhort ſoever, 3 s. 4 d.
For entring the Errors, 2 s.
For entring *in nullo eſt Erratum*, 2 s.
For every Diminution, 2 s.
For abatement of a Writ of Error and licence to ſue a new one, 2 s.
For entring of the ſame, 2 s.
For every Recognizance ſingle, or with condition, 2 s.
For every Inrolment whatſoever, longer than three ſheets, 6 s. 8 d.
After the rate for a Roll on both ſides, 6 s. 8 d.

For half a Roll, 3 s. 4 d.
For every bail by Recognizance, 2 s. 6 d.
For entring every Judgment after Verdict with a *Talis*, 3 s. 6 d.

Kings Bench Fees of Clerks and Attorneys.

FOr their Fees in every cauſe for every Term, 3 s. 4 d.
For their Fees at every *Niſi prius*, and inquiry of damages, 3 s. 4 d.
For their Fees in every Appeal and Aſſize, every Term, 6 s. 8 d.
For drawing every Declaration not exceeding a ſheet, 1 s.
For every ſheet above one, 8 d.
For drawing every Action on the Caſe and Covenant, how ſhort ſoever, 3 s. 4 d.
For drawing every Ejectment, 2 s.
For every ſheet ingroſſed in Parchment, 4 s.
For drawing a Surmiſe upon a Prohibition, every ſheet, 1 s.
For drawing ſpecial Pleadings, every ſheet, 8 d.
For Copies of Declarations, Pleas, and other things, every ſheet, 4 d.
For continuing every cauſe every Term, 4 d.
For entring all things above three ſheets, every ſheet, 8 d.
For every Judgment by circumſt. 1 s.
For making every Bail, 4 d.
For making every Bail of *Middleſex*, *Diſtring. ſuper-vic.* and *Hab.corp. per præceptum thereupon* 8 d.
For making every *Hab. corp. ad fac.* *Hab. corp. cum privileg.* *Certiorari*, *Procedend.* *Elegit* & *habere fac. poſſeſſionem*, beſides 4 d. allowed by the Prothonotary, 1 s. 8 d.
For every ſheet in a Writ of Inquiry, Prohibition, Conſultation, &c. 4 d.

For

For entring every *Scire facias*, 1 s.

Fees received by the Secondary.

FOr taking the acknowledgment of a Deed in Court, 1 s.

For signing every Judgment by confession, *Nihil dicit*, *Verdict* & *Demurrer*.

Also for acknowledging of every Deed for every Judgment pronounced in open Court, every Rule to alter a Visne, for every Rule for a Prohibition, Consultation, Attachment, &c. he receiveth for the Poors Box, 2 s.

For allowance for a Writ of Error *coram nobis resident*. 2 s.

Whereof to the Box, 1 s.

For an allowance of an *Audita Querela*, 2 s.

Wherof to the Box, 1 s.

Kings-Bench Fees.

FOr every common Bail, 1 s. 2 d.

For a special Bail upon a *Habeas corpus*, *Certiorari*, or *Attachment*, 4 s. 1 d.

Fees received by the Secondary for the Judges.

FOr every *Hab. corp. ad fac.* & *recipiend*, 4 s.

For every *Procedendo*, 4 s.

For every *Certiorari* to remove a foreign Attachment, 4 s.

For a *Procedendo* thereupon, 4 s.

For every *Habeas corpus cum privileg.* 3 s.

Out of every *Latitat* they have, 4 d.

Fees received by the Judges Clerk.

FOr every Warrant for *Hab. corp.* or any thing to which the Judge putteth his hand in the Term-time, 1 s.

And in the Vacation, 2 s.

For the acknowledgment of a Deed, which he saith is for his Master, 6 s. 8 d.

And for his own fee, 2 s.

For taking the Depoſition of Witneſſes upon a Suggeſtion for a Prohibition, for every Witneſs, 6 s. 8 d.

And for his own fee for every Witneſs, 2 s.

Fees paid to the Clerk of the Papers.

FOr copying every ſpecial Plea, every ſheet, 4 d.

For making the Paper-book, either Iſſue or Demurrer, every ſheet, 8 d.

For entring into his Book every Record to be read in Court, 1 s.

For entring into his Book every cauſe to hear Counſel on both ſides, 1 s.

For entring every Trial at Bar, 1 s.

The Keeper of the Poſteas.

HAth for the receiving, marking, keeping, and delivery of every *Poſtea*, 4 d.

The Keeper of the Files of Declarations.

HAth for the filing, pyling and ſhewing the Files of every Clerk for every Term, 2 s.

Fees paid to the Clerks of the Rules.

FOr entring every Rule, except general Rules for anſwer, 4 d.

For the copy of every Rule, 4 d.

For every general Rule for anſwer, being above three ſheets, 2 d.

For every Rule given in Court, with a copy for a Prohibition or Conſultation, he taketh 12 d. and the due is but 8 d. which hath been taken above 25 years, 8 d.

For every Rule with a copy given in Court the laſt day of the Term, he taketh 12 d. whereas the due is but 8 d. which hath been taken this two or three years, 8 d.

For every copy of Rule after the Continuance-day, he taketh 8 d. whereas the due is but 4 d. which hath been taken this two or three years, 4 d.

All

All such *Affidavits* as are read in Court, he claimeth these two years or thereabouts, to have the keeping of them, and taketh for copies both of Plaintiff and Defendent at his own discretion, which formerly hath not been.

Dogget-maker.

THe Secondarie's Clerk for making and keeping the Remembrances for Entries, &c. hath of every Clerk every Term, 8 *d.*

Keepers of the Bails.

FOr entring the common Bails into Parchment-Rolls every Term, every Clerk of the Office giveth what he pleaseth.

Keepers of the Rolls of Writs.

FOr the carrying of Rolls of the Writs to the Hall and the Office, he hath of every Clerk every Term what he pleaseth.

Fees paid to the Custos Brevium *and his Clerk.*

FOr every Record of *Nisi prius* in a short action of Trespass, 4 *s.* 6 *d.*

For every other Record, how short soever, 5 *s.*

For every full Press of *Nisi prius* or *Mittimus*, 6 *s.*

For every *Nisi prius* out of the Crown side, 6 *s.* 8 *d.*

For every full Press there, 1 *s.* 8 *d.*

For every *Nisi prius* upon an Indictment for murther, for every Name that pleadeth to Issue, 6 *s* 8 *d.*

For every short Exemplification in Trespass, 10 *s.*

For every Exemplification containing a large skin, 1 *l.*

For the like in the Crown side, 2 *l*

For every Exemplification in *Ejectione firmæ*, 13 *s.* 4 *d.*

For filing a Writ being a *Post diem* upon the *Angl.* 4 *d.*

For

For all *Post Terminums* at any times after the first week ended in the second Term, 1 s. 8 d.
For every Warrant of Attorney in Murther, 1 s.
For every Sheriffs Warrant, 8 d.
For every other Warrant of Attorney, 4 d.
For every search for a Roll for ten years last past, 6 d.
For every search above ten years last past, 3 s. 4 d.
For every search for Rolls for the six last Terms, 1 d.
For search for every File of Declaration, Bail, Judicial, and other Writs, after ten years, 1 s. 4 d.
For the copy of every sheet between party and party, 4 d.
For a Copy of Deed inrolled, for every sheet, 8 d.
For a File of an *Angl.* for every Term after one, 4 d.
For the Copies of every Writ of Appeal, every sheet, 8 d.

Fees now paid to the Custos Brevium *his Clerks.*

FOr writing every *Nisi prius* or *Mittimus*, being but one press, 1 s. 6 d.
For every press more than one, 1 s.
For writing every Exemplification in Tresspals or Ejectment, 3 s. 4 d.
For writing every large skin of Parchment exemplified, 6 s. 8 d.

The Fees for writing every *Nisi prius* or *Mittimus* were uncertain, until about *Anno* 2 *Jac.* and then it was ordered by the Judges that the Clerks should have for writing of the first press 1 s. 6 d. and if more, then every other press 12 d. and every full press to contain sixty lines.

Fees claimed by the Cryer and Porter.

As Cryer.

For calling a Jury,	2 s.
For every Oath given in Court,	4 d.
For taking a privy Verdict,	4 s.
For every Argument in Law,	2 s.
For every Wager of Law,	2 s.
For every admission to Guardian,	6 d
For a Bail taken at the Bar,	2 s.
For calling a Nonsuit,	4 d.
For calling the Record,	1 s.
For calling a Default,	1 s.
When a Pardon is pleaded,	2 s.

As Porter.

For every Trial at Bar,	5 s.
For every Privy Verdict,	2 s.
For summoning the Wager-men,	3 s.
For a Bail taken at Bar,	2 s.
For a Record called,	6 d.
For a Default called,	6 d.
For a Pardon pleaded,	2 s.
For the discharge of a Rescous,	4 d.
For a Bail taken in Court,	8 d.

Of all these Fees mentioned and claimed by the Cryer and Porter, these following have been paid as due, during the time of our knowledge.

As Cryer.

For calling a Jury,	1 s.
For swearing every Witness,	4 d.
For a Wager of Law,	1 s.
For a Nonsuit,	1 s.
For a Default of a Record,	1 s.
For a *Defecit de Lege*,	1 s.

As

As Porter.

FOr ſummoning the Wager-men, 3 s.
Alſo the Porter receiveth more for the Wager-men where the Defendent wageth his Law, or is ready to wage it, 1 s.

Fees received by the Clerk of the Errors immediately after the Statute of 27 Eliz.

FOr the Lord Chief Juſtices fee for the allowance, 17 s. 4 d.
For the Receipt, 5 s.
For the Return, 2 s.
For the Certificate of the firſt preſs, 6 s.
For writing the firſt preſs, 2 s.
For a *Superſedeas*, 2 s. 7 d.

Theſe Fees amounting to 35 s. 3 d. *were paid upon the allowance of the Writ, and for the* Superſedeas.

FOr the certifying of the Record for every preſs, beſides the firſt, 6 s.
For writing every preſs after the firſt, 1 s.
For the Roll, 1 s.
For making *Non proſ.* upon the Roll, 5 s.

Alſo immediately after the making of the Statute of An. 2 Jac. *the Fees taken for the Bail were as followeth upon a* Writ of Error.

TO the Prothonotary for the Recognizance, 2 s.
To the Judges Clerk, 2 s.

Fees upon a Writ of Error.

FOr making the Bail, 4 d.
For drawing and entring the Recognizance, 4 s.

Now, and for the ſpace of thirty years laſt paſt, he hath taken upon the Receipt of every Writ of Error and *Superſedeas* in a groſs ſum, 2 l. 6 s. 8 d.
Alſo for certifying every preſs beſides the laſt, 6 s. 8 d.

For

For writing every preſs beſides the firſt, 2 s.
For every *Superſedeas* beſides the firſt, with the Seal, 9 s. 3 d.

Theſe laſt mentioned were ſet down by Sir John Popham, *late Lord Chief Juſtice,* ex relatione Ed. Pag. Cler. Error, *but we do not certifie it upon our own knowledge.*

ALſo he taketh for every Bail in groſs ſum, 9 s. 4 d.

For every Writ of Error, *tam in redditione Judicii quam in adjudicatione executionis*, he taketh double fees.

The Marſhal's Fees, as they were certified by Sir Thomas Knowls, *Knight, ſometimes Marſhal of the Kings Bench.*

INprimis, for an enlargement of every Priſoner, which is termed his *Admiſſion-fee*, 10 s.

Alſo he demandeth of every Priſoner upon his enlargement a fine for not wearing of Irons.

For Execution in every Pound, 3 d.
For Actions in every Pound, 1 d. ob.

The Marſhal taketh for every Diſmiſſion more than the former fee of ten ſhillings, 8 s 8 d.

The Deputy Marſhal, and Marſhals Men, take for every Priſoner that is committed in Court, 5 s. 6 d.

And for every Priſoner committed from the Judges Chamber, 2 s. 6 d.

The Deputy Marſhal taketh for the allowance of every *Habeas corpus*, 2 s. 6 d.

The Clerk of the Fines.

THere was an Office invented and erected about 6 *Jacobi*, whereby is taken upon the filing of every Declaration in Debt, where the Debt is above 40 *l.* and not above 100 Marks, 3 s. 4 d. And above 100 Marks, and not above 100 *l.* 5 s. and after the ſame rate, and alſo in every Action

on

on the Case and Trespass for Goods, where the Damages are laid above 40 *l.* the like rates; so that the Plaintiff or Defendent be not a person priviledged, nor the Defendent in *Custodia Marr.* whereas before 6 *Jacobi*, in all our Memories, no such Moneys were paid, or demanded.

Fees for Trials at Bar, taken by several Officers.

THe Cryer for calling the Jury, 2 *s.*
For swearing every Witness, 4 *d.*
The Porter for keeping the Door, 3 *s.*
The Cryer for a Nonsuit, 2 *s.*
The Deputy Marshal, 2 *s.*
The Tipstaves, or Marshals men, for a Verdict *sedente Curia*, 8 *s.* 6 *d.*
If the Jury lie together all night, 17 *s.* 8 *d.*
The Judges Foot-cloth-men 12 *d.* apiece, 4 *d.*
The Secondary receives for a Verdict in Court, 2 *s.*
And for a privy Verdict 13 *s.* 4 *d.* which he saith is thus divided, *viz.* The Judge that taketh the Verdict, 6 *s.* 8 *d.* To the Secondary, 2 *s.* and the rest being 4 *s.* 8 *d.* among other Officers that attend.

Of all the Fees mentioned, we present these following to be due.

TO the Cryer for calling the Jury, 1 *s.*
For swearing every Witness, 4 *d.*
For calling a Nonsuit, 1 *s.*
To the Deputy Marshal, 2 *s.*
To the Porter for keeping the Door, 1 *s.*
To the Secondary for taking a Verdict in Court, 2 *s.*
To him for a privy Verdict, 13 *s.* 4 *d.*
And now they take no other Fees, than these last mentioned.

We pay unto the Crown Office for estreating of every Amerciament,

no Also

Alſo there is paid to the Secondaries Clerk by every one of the Prothonotaries Clerks every Term that he faileth to bring in his Rolls within 24 days next following, after *Trinity*, *Michaelmaſs*, and *Hillary* Terms reſpectively, and within ten days next after *Eaſter* Term, 12 *d.* Whereas formerly they had time until the Eſſoin-day of the next Term, to bring them in without paying any Fee.

Alſo there is paid to the Secondaries Clerk for the filing of every common Bail, after ſix days after every Term over and above the fee. 4 *d.*

The Table of which ſeveral payments laſt mentioned, is remaining in the Kings-Bench Office.

Fees due and received by Philizers.

FOr every *Cap. Al. Plur. Exigent, Proclam. & Diſtring.* in Treſpaſs, 6 *d.*

For every Exigent and Proclamation in Replevin, 6 *d.*

For every *Pone*, *Cap. Alias*, *Plures*, *Teſtat.* in Replevin, 6 *d.*

For every *Superſedeas* upon the mean proceſs aforeſaid, 2 *s.*

For every *Cap. Al. Plur. Teſtat.* and *Exig. in Tranſ. ſub caſum*, Action on a Statute, *Cap. Cuſtod. Tranſ. contra forma ordinationis*, Ejectments and ſuch ſpecial Writs, 1 *s.*

For Proclamations thereupon, 1 *s.*

For the *Diſtringas* thereupon, 1 *s.*

For every *Cap. Alias*, and *Plur.* in an Appeal of *Mayhem*, 1 *s.*

For every Name in every *Cap. Al. & Plur.* in an Appeal of Murther, 1 *s.*

For every Proclamation in every Appeal, 1 *s.*

For every general *Cap. utl & deliberatum de recordo*, 6 *d.*

For

For every special *Cap. ut. & deliberatur de recordo* 2 s. 4 d.

For every Writ of *Withernam*, second Deliverance, and *Return. Habend.* before Avowry, 2 s.

For every *Venire facias*, 6 d.

For every *Distring. jur. deliberatur de recordo, & jur. Nisi prius*, 18 s. 2 d.

For every *Subpœna* upon Issue by Original, 2 s.

For entry of Declarations in trespass by Original, 2 s.

For entry *Not guilty* thereunto, 1 s.

For entring every Ejectment and Action upon the Case, not above three sheets, 2 s.

If longer, for every sheet, 8 d.

For every general Imparlance, 4 d.

For every special Imparlance, 2 s.

Copies of Writs of Attaint before Judgment, *per* sheet, 8 d.

Fees due upon Trials of Nisi prius *at* Guild-Hall, London.

TO the Associate for entring a cause in the Lord Chief Justice his Book, 11 s. 8 d.

To the Sheriff for returning the *Venire*, 4 d.

To him for allowing the *Distringas*, 2 s. 4 d.

To the Clerk that reads the Record and Evidence, 1 s.

To the Associate, 1 s.

For every Default, 2 s. 4 d.

To the Cryer, 1 s.

For swearing every Witness, 4 d.

The Marshal, 2 s.

The Foot-cloth, 1 s.

The Green-cloth, 1 s. 6 d.

The Door-keeper, 1 s.

The Hall-keeper, 1 s.

The Jury-men, 8 s.

Oyer-

Oyer-men every one, 4 d.
For ſummoning and keeping the Jury, 4 s. 4 d.
Lights, 1 s.
Bar-Keeper, 1 s.
Return of the *Poſtea*, 2 s.
Alſo the Aſſociate taketh in every cauſe where the Plaintiff's Attorney is not preſent, and of every Defendent which appeareth and hath not his Attorney in Court, for a Warrant of Attorney.

If the Verdict paſs for the Defendent or the Plaintiff be non-ſuited, then there are theſe Fees taken for the Defendent again.

TO the Marſhal, 2 s.
To the Cryer, 1 s.
To the Foot-cloath, 1 s.
To him that reads the Record, 1 s.

Fees paid upon Tryals of Niſi prius *in* Middleſex.

TO the Aſſociate for entring the cauſe in My Lord's Book, 11 s. 8 d.
For return of the *Venire*, 2 s.
For allowing the *Diſtringas*, 12 s.
To the Judge's Marſhal, 2 s.
To the Cryer, 1 s.
To him for ſwearing every Witneſs, 4 d.
To the Sheriff for a *Talis*, 2 s. 4 d.
To him for a Non-ſuit, 2 s. 4 d.
To the Keeper of the Jury, 1 s.
To the Porter, 1 s.
To the Jury, 12 s.
To the Aſſociate for return of the *Poſtea*, 2 s.
To him that readeth the Record and taketh the Verdict, 1 s.
To the Judge's Foot-cloath and Horſe-Keeper, 1 s.

Fees paid to the Clerk that draweth up ſpecial Verdicts in London *and* Middleſex.

For drawing up a ſpecial Verdict *per* ſheet, 1 s.
For indorſing it *per* ſheet, 8 d.
For copying it *per* ſheet, 4 d.

Fees paid for drawing a ſpecial Verdict at Bar.

For drawing *per* ſheet, 1 s.
For Copy *per* ſheet, 4 d.

Fees paid to the Clerk of the Aſſizes for Poſteas.

For returning every *Poſtea*, the Verdict paſſing for the Defendent or the Plaintiff non-ſuited, 2 s.
For drawing a ſpecial Verdict *per* ſheet, 1 s.
For the Copy thereof *per* ſheet, 4 d.

But now the Clerk of the Aſſizes taketh,

For the Return of a *Poſtea* with a general Verdict, 2 s.

If it be long or contain divers Iſſues, more
For engroſſing a ſpecial Verdict *per* ſheet, 1 s.
For two Copies *per* ſheet ſeverally, 4 d.

Fees paid to the Sheriff.

For return of a *Cepi corpus*, 4 d.
For returning a *Venire facias* in *London*, 4 d.
For returning it in any other County, 2 s.
For return of a *Scire facias* with a *Nihil*, 1 s.
For return of *Scire facias* with a *Scire feci*, 2 s.

The Fees paid upon the Reverſal of an Outlawry.

For copy of the *Exigent* and Return *per* ſheet, 6 d.
To the Clerk of the Papers for reading the Record, 1 s.
To the Marſhal, 2 s. 6 d.
To the Secondary, 1 s.
To the Box, 2 s.

To

To the Cryer and Tipſtaffes 4 s.
To the Judges for every Defendent, 13 s. 4 d.
To Counſel, 10 s.
For the Accompt for every Reverſal by Plea, 4 s.
For every Defendent, 3 s. 4 d.

Fees paid to the Secondary.

TO him for ſigning Coſts upon a *Poſtea* with a general Verdict or Non-ſuit, 2 s. 6 d.
To him for taxing Coſts upon a *Poſtea* with a *Talis* returned, 4 s.
For taxing Coſts on a Writ of Inquiry, 2 s. 6 d.
There is paid to him for marking in the Sheriff's Book Jury-men for a Tryal at the Bar by the Plaintiff's Attorney, 10 s.
By the Defendent's Attorney, 10 s.
To his Clerk for a Copy of the Jury, 2 s. 6 d.
For ſigning coſts upon *Comparuit ad diem*, 2 s.
To the Cryer, 1 s. 6 d.
Wager in Law, 2 s.
For filing ſpecial Bail upon a *Habeas corpus*, 4 s. 10 d.
For the like upon a *Cepi corpus*, 2 s. 6 d.
For filing ſpecial Bail to appear to a new Original. 2 s. 6 d.
To proſecute an *Audita Querela*, 2 s. 6 d.

RULES and ORDERS FOR THE KING'S-BENCH

Formerly appointed by the Judges, and still in Practice.

Concerning Officers and Attorneys.

THat all Officers and Attorneys of this Court be admitted of some Inns of Court or Chancery, in the same Term wherein they were admitted Officers or Attorneys, and be in Commons one week in every Term and take Chambers there; or in case that cannot be conveniently, yet to take Chambers or Dwellings in some convenient place, and leave notice with the Butler where their Chambers or Habitations are, under pain of being put out of the Roll of Attorneys.

2. That all Officers and Attorneys of this Court appear in person in this Court upon or before the 14 day of *Michaelmas*-Term, and upon or before the 7 day of every other Term; upon pain of 10 *s.* for the first default, 20 *s.* for the second default, and putting out of the Roll upon the third default. The apparance to be entred with the Prothonotary: and the Defaulters to be delivered to the Court upon Oath (if required) within three days after the time appointed for apparance.

3. That every Sheriff have his Deputy in this Court, to return and receive Writs. And that each Deputy yearly before *Hillary*-Term have his name and the place of residence in *London* or *Westminster*,

ſter, ſet and continued up in Tables in the Office of the Prothonotary.

4. That the Clerks of Aſſize, their Deputies or Aſſiſtants, do perſonally appear with their *Poſteas* on the firſt day of *Eaſter* or *Michaelmas*-Term; and the Deputy Sheriffs, and all other Officers of the Court do perſonally appear by the Eſſoyn-day of every ſecond Return of every Term; and continue there during the reſidue of the Term, without ſome juſt cauſe to the contrary allowed by the Court.

5. That for the future common Solicitors be not admitted to practiſe in this Court, unleſs they are admitted Attorneys of either Bench; provided that it extend not to the managing of Evidence at a Tryal, nor to private Solicitors, or Servants of Corporations, or other perſons in the cauſes of their Maſters.

6. That none be admitted an Attorney of this Court for the time to come, unleſs he hath practiſed as a common Solicitor in this Court by the ſpace of five years now laſt paſt; or hath ſerved, or ſhall have ſerved by the ſpace of five years as a Clerk to ſome Judge, Sergeant at Law, practiſing Council, Attorney, Clerk or Officer of one of the Courts at *Weſtminſter*, unleſs his Maſter die or give over his practice; And be alſo upon examination found of good ability and honeſty for ſuch employment; and that ſufficient proof (to be put into writing) be made of ſuch ſervice to the Prothonotary upon a deſire of admittance, and then filed without Fee.

7. That no perſon practiſe in another's name, nor that any Attorney knowingly permit another to practiſe in his name, upon pain of being put out of the Roll.

8. That

8. That Attorneys dismissed by one Court from their practice for misdemeanours, be not (after Certificate) admitted to practise in another Court, it being contrary to the intent of the Law.

9. That no Under-Sheriff, or Bayliff of Sheriffs of Liberties be admitted during such their imployment, to practise as Attorneys, under pain of expulsion from the Employment of an Attorney, and not to be readmitted.

10. That such Attorneys as have not been attending their employment in this Court by the space of one year last past, unless hindred by sickness, be not allowed their priviledge of Attorneys.

11. That for the prevention of maintenance and brocage no Attorney be Lessee in an Ejectment, nor Bail for a Defendent in this Court in any Action.

Concerning Sheriffs and Bayliffs.

THat for the prevention and remedy of delays and abuses of Sheriffs, Under-Sheriffs, Bayliffs of Liberties and their Deputies, and other Bayliffs of Sheriffs, *&c.* in execution of Process and Writs, if it shall appear that any such Officer shall wilfully delay the Execution or Return of any Process or Execution, or shall take or require any undue Fees for the same, or shall give notice to the Defendent, thereby to frustrate the Execution of any Process or Writ; or having levied Money, shall detain it in their hands after the times of the Returns of their Writs, besides the ordinary course of Amerciaments, the contempt or misdemeanour appearing, an Attachment, Information, Commitment, or Fine to be, as the case requireth; and this as well in case of a late Sheriff or Person before mentioned, as of them at present in Office.

That, to reform the abuses by blank-warrants granted by Sheriffs, whereby persons are arrested and

and driven to extorted compoſitions for their liberty, without proceſs at law, no warrants be granted out to any Officer to arreſt or attach any perſon before a Writ firſt come to the Sheriff.

And whereas Sheriffs have taken immoderate and exceſſive fees for execution of Writs of Poſſeſſion and Reſtitution of poſſeſſion contrary to Law: It is declared that ſuch immoderate Fees ought not to be taken; and in caſe ſuch ſhall be taken, this Court to proceed to puniſh the ſame according to Law.

Concerning the Reformation and Puniſhment of Abuſes in general.

ORdered, That a Jury of able and credible Officers, Clerks and Attorneys, once in three years be impannelled and ſworn to enquire.

1. Of the Points uſually inquirable by Writ, *viz.* Falſities, Contempts, Miſpriſions and Offences.

2. Of ſuch who have been admitted Attorneys or Clerks, and are notoriouſly unfit, their names to be preſented to the Court, and they to be puniſhed or removed, as the caſe ſhall require.

3. Of new or exacted Fees, and of thoſe that have taken them, under whatſoever pretence, and to prepare and preſent a Table of the due and juſt Fees, that the ſame may be fixed and continue in every Office; and likewiſe for the *Marſhalſey*.

4. And that ſome perſons be injoyned and ſworn to give evidence, *viz.* ſome Clerks of the Court, and ſome Attorneys in every County, not excluding others.

Concerning the better preſervation of Order among the Officers and Clerks, and obſervation of breach of Orders and Miſdemeanours.

THat the Court do once every year in *Michaelmas*-Term nominate twelve or more able and credible Practiſers in the Court to continue for the

year ensuing, for these purposes hereafter limited.

1. That they or any of them examine such persons as shall desire to be admitted Attorneys, and appoint convenient times and places for the same: and in order thereunto, that such persons as shall desire to be admitted Attorneys, first attend the Prothonotary with his proof of Service, then to repair to the persons appointed to examine Attorneys, and being approved to be presented to the Court with the Assignation of his Approbation, and then to be sworn in open Court, unless some just exception be against him.

2. That they give information to the Court from time to time of breaches of Orders and Miscarriages of Officers, Attorneys, and Clerks.

3. That a settled course of practice and proceedings be settled, especially in those causes where there hath been uncertainty; and that the Inconveniencies in Process, Proceedings, and Pleadings, may be regulated unto a due course, in order whereunto these several things are ordered and directed, according to the method of proceedings.

Concerning original Suits and Process, and where laid.

THat Actions upon the Case, Trespass for Goods, Assault, or Imprisonment, arising in any English County, be laid in their proper Counties, unless they arise where the Justices of *Nisi prius* seldom come. And because Trespass and Trover for Goods, Battery, Imprisonment and Slander must needs be notorious in what County they arise; the Attorney knowingly laying them out of the proper County (unless in the cases before expressed, or by such other causes as shall be allowed by a Judge of the Court, and duly made appear to be true) to be severely punished.

That although the Declaration be delivered seven days before the last day of the next precedent Term, or after, yet before Plea upon Oath made, the *Visne* may be changed upon motion in the said transitory Actions the next Term after: And the Defendent to plead to the new Action as he should have done in the other, without delay.

That the *Visne* may be changed (upon Oath) as before, though the Defendent come in by *Exigent*.

Concerning Process, and serving thereof.

That according to the provision of the Statute of 31 *Eliz.* all Attorneys that sue out Process of *Exigent*, be careful that Writs of Proclamation be delivered, and the Sheriffs do take care duly to execute the same.

That according to the Statute of the twenty third year of *Henry* the sixth, a prisoner taken upon a *Capias* in Process, be not discharged till he hath given Bond to appear, unless the Plaintiff or his Attorney shall consent to take an Apparance without Bail. And in such case the warrant of Attorney to appear, to be subscribed or accepted by the Defendent's Attorney, and such Warrant not to be revoked, and an Attachment to be granted against the Bayliff offending herein, or against the Attorney refusing to appear or procure an apparance, having so subscribed or accepted.

Concerning a Habeas Corpus *to Sheriffs and Goalers.*

That a *Habeas corpus cum causa ad faciendum & recipiendum*, directed to any Sheriff (other than *London* or *Middlesex*) not to be returnable *immediatè*, or in the Vacation-time, but at a day certain in Court in the Term, unless it be to deliver over to prison in discharge of his Bail.

That

That ſuch *Habeas corpus* to the Sheriff of *London* or *Middleſex* may be granted in Term or Vacation-time returnable *immediate*.

That in caſe of *Habeas corpus*, returnable *immediate*, the Sheriff ought to make his Return the ſame day that the Writ is delivered; and to bring the body immediately as required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas corpus* is directed to a Sheriff, Warden of the *Fleet*, or Goaler, the Priſoner is to be brought in cuſtody according to the Writ at the day limited, without being permitted to wander abroad in the mean time, under pretence of ſuch Writ.

That a *Habeas corpus ad reſpondendum* may be granted to the Warden of the *Fleet*, or the Keeper of an inferiour Priſon of a Liberty or Franchiſe, returnable at a day certain in Court, and to be a good cauſe of *Deteiner*, as well as where a *Capias ad reſpondendum* comes to a Sheriff.

That a *Habeas corpus ad ſatisfaciendum* may be granted to the Warden of the *Fleet*, or to ſuch inferiour Goaler returnable in Court, at a day certain, and the Number-Roll of the Judgment to be endorſed upon the Writ by the Attorney who ſues it out, and ſuch Writs to be a cauſe of Deteiner.

That if upon *Habeas corpus cum cauſa*, the Priſoner be returned charged with proceſs out of the Common-Pleas or Exchequer, though returnable at a day to come, the priſoner may be committed with thoſe cauſes.

That if upon a *Habeas corpus* or *Cepi corpus*, the party be returned in cuſtody and Bailable, and ſpecial Bail requireable, the Bail not to be taken abſolutely without conſent of the Plaintiff or his Attorney;

ney; and if taken *de bene esse*, the Prisoner not to be discharged till the Bail be assented unto, or the Plaintiff over-ruled in Court to accept the same upon examination.

Concerning Habeas Corpus *to Inferiour Courts, and* Procedendo.

THat Writs of *Habeas corpus*, directed to the inferiour Courts of *London*, *Westminster*, *Southwark*, and other Courts within five Miles of *London*, may be returnable *immediatè*. And if the Defendent intendeth to be bailed, then upon or within four days after allowance of the Writ, Notice is to be given in writing of the Names and addition of the Bail, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that caused the Plaint to be entred: or if none can be found, then notice of the Premisses to be left in writing with the chief Clerk of the inferiour Court, or his Deputy, by the party that tenders the Bail, or his Attorney, and Oath made thereof; otherwise the Bail not to be taken; and a *Procedendo* granted, if desired, before Bail accepted.

That if no Bail in such cases be put in within eight days after the *Habeas corpus* allowed in those Courts where it is returnable *immediatè*, a *Procedendo* may be granted by any Judge of the Court, if desired before Bail taken.

And if Bail be taken in the absence of the Plaintiff, or his Attorney, the same is to be taken *de bene esse*; and if exceptions be taken within twenty days after notice given to the Plaintiff or his Attorney, of the names of the Bail, and before whom taken; Then upon Oath made of such notice, the Bail to be delivered out to be filed.

That

That if Bail upon a *Habeas corpus* be taken before a Judge at his Chamber, and not excepted against, if not filed within four days after the twenty days, a *Procedendo* may be granted upon Certificate that it is not filed.

That in Term-time the Plaintiff in the Inferiour Court may ſpeed the Defendent to put in, or to file his Bail by Rules given; and if not filed according to Rules, upon Certificate thereof, a *Procedendo* to be granted.

Concerning Special Bail.

f. 48. 319. 299. THat upon a Cauſe removed by *Habeas corpus*, out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Pool*, which are Counties where the Judges of *Niſi prius* ſeldom come, if the Action be tranſitory it muſt be laid in the County of *Kent*, *Southampton*, *York*, *Stafford*, or *Dorſet*, where the Town and County lyeth.

That in Covenant, becauſe the Damages are uncertain till Declaration, Bail at diſcretion.

That in Battery, Conſpiracy, falſe Impriſonment, no ſpecial Bail of courſe without ſpecial Order and Motion and Order.

That in Slander no ſpecial Bail, except in Slander of Title, wherein to be left to the diſcretion of the Judges.

That in Priviledge, other than for fees or diſburſements in Court, as an Attorney in this Court, Bail at diſcretion of the Court, in ſuch caſe where in a Suit by a common perſon, ſpecial Bail is not requiſite.

Concerning Apparances, and entring thereof.

THat an Attorney of either Bench accepting a Warrant, or ſubſcribing a Proceſs, Declaration, or Warrant to appear, be compelled to cauſe Apparance, or liable to an Attachment, or put out of

the

the Roll, as the cause requires; and the party not to be received to countermand such Apparance after his Reteiner.

That no person without Rule of Court, Order of Judge, or Prothonotary, and notice to the adverse party or his Attorney, change or Shift his Attorney: And such Attorney newly coming in, to take notice at his peril of the Rules whereunto the former Attorney was lyable, had he continued.

That a Reteiner of an Attorney of the Common Pleas, by an Attorney of the King's-Bench, *& è converso*, be a sufficient excuse to the Attorney so retained, acting according to such Retainer; and the Attorney so retaining without Warrant from the party, be liable to punishment.

Rules to Declare and Plead.

IF the Defendent be committed to the Prison of the *Marshalsey*, by the Process of this Court, the prisoner giving Rules to declare, the Plaintiff not declaring before the end of the next Term after the Commitment inclusively, then the Defendent in reference thereunto, to be discharged of the Imprisonment in the end of the second Term, upon common Bail.

And of any Defendent be committed to any other Prison upon any Process of this Court, giving Rules and notice as before, and Oath thereof made; If the Plaintiff do not remove the Prisoner, and declare before the end of the second Term after the Commitment inclusively, then the Defendent in reference thereunto likewise to be discharged of the Imprisonment in the end of the second Term upon Common Bail.

Concerning Declarations.

FOr avoiding of long and unneceſſary repetitions of the Original Writ in Actions upon the Caſe, and perſonal Actions upon penal Statutes.

That Declarations in Actions of Treſpaſs upon the Caſe, or perſonal Actions upon any general Statute, namely *Hue-and-cry*, *Monopolies*, or for a Suit in the Admiralty, and ſuch like, other than Debt, repeat not the Original Writ, but only the nature of the Action, *viz. A. B.* was attached to anſwer *C. D.* in Plea of Treſpaſs upon the Caſe, or in Plea of Treſpaſs and Contempt againſt the form of the Statute.

For the avoiding of the Common Bar, and new aſſignment.

That unneceſſary length of Declarations be reformed, and in order thereunto.

THat in Actions of Covenant, not to repeat more of the Deed than is neceſſary for the Aſſignment of the Breach, and not to repeat the Covenant in the Concluſion.

In Actions of Slander long preambles to be forborn, and no more inducement than what is neceſſary for the maintenance of the Action; but when it requires a ſpecial inducement or *Colloquium*.

That in Actions upon general Statutes, the Declaration not to repeat the Statute, but to conclude againſt the form of the Statute, in ſuch caſe made and provided; as in caſe of Debt upon the Statute of 2 *Ed.* 6. for Tythes, and 32 *Hen.* 8. for maintenance, 21 *Jac.* of Monopolies.

That in Actions of Debt upon a Judgment had in the Courts at *Weſtminſter*, to recite only the Judgement; but if a Judgment had by or againſt an Executor or Adminiſtrator, then the Action of Debt upon that Judgment, to repeat the Declaration and Judgment.

That

That the Plaintiff may amend his Declaration, paying costs, or giving an Imparlance at the Plaintiff's election, by the order of Court, or a Judge, after it is entred, if the amendment be but a small matter, that it doth not deface the Roll.

Concerning the Entring of Rolls, and by whom.

THat no Rolls be delivered to be entred, but to the Prothonotarie's Clerks.

That no Rolls be carried into the Country, under pain that the Offender be excluded from entring any more Rolls afterwards as a Clerk.

Concerning Imparlances upon Suits by Original.

FOrasmuch as some inconveniences do sometimes happen to the Plaintiffs, by entring their Declaration in special Actions; It is therefore ordered, that the Plaintiffs in such special Actions shall have liberty to enter Imparlances the Term following, entring the same the first Term with an *Incipitur*, as it hath been usual; and that all other Imparlances be duly entred before any Issues, Demurrers, or Judgments thereupon be entred.

That if a Defendent appear the first Term, and give no Rules to declare, the Defendent's Attorney may the second Term be compelled to accept a Declaration with an Imparlance, and the Declaration may be entred as of that Term with an Imparlance over to the next Term, or in the first Term with an *Incipitur*, as before, as the case shall require.

That if the Plaintiff declare not the second Term, though the Defendent give no Rules, yet a Non-suit may be entred at the end of the second Term, upon a continuance over by him by *Dies datus*, but not the third Term, or after.

Upon a meer real Action, an Imparlance to be of course.

That

That in Ejectment, or any personal Action, if the Apparance be the first Return of *Hillary* or *Trinity* Term, no Imparlance without consent or special Rule.

In causes, other than in *London* or *Middlesex*, if the Apparance be before *Crastinum Martini* or *Mensem Paschæ*, no Imparlance without Consent or special Rule, but if upon or after those Returns, an Imparlance of course.

In *London* or *Middlesex*, if the Apparance be before *Crastinum Ascensionis*, or before the last Return of any other Term, no Imparlance without Consent or special Rule, but the Defendent to plead as of that Term, within fourteen days after the end of the Term, upon Rule given to answer, but if of *Crastinum Ascensionis*, or the last Return, then an Imparlance of Course.

If a Writ be returnable *Quinque Paschæ*, or the last Return of any Term, the Defendent giving Rules, and calling for a Declaration, if it be not delivered four days before the Essoin-day of the ensuing Term, or more, a Non-suit to be entred.

Concerning Pleading.

THe Common Bar and new Assignment to be forborn, where the certainty is contained in the Declaration, equivalent to a new Assignment.

That Pleadings be succinct, without unnecessary Repetitions.

That in the pleading of an Outlawry the mean Process be not repeated, but the *Exigent*, and Outlawry joyned to the commencing of the Suit.

That in pleading a general Statute, the Statute be not recited; as the Statute of 21 of King *James* of Limitations.

Con-

Concerning Demurrers.

THat according to the Statute of 27 *Eliz.* upon Demurrers, the Cauſes be ſpecially aſſigned. and not involved with general unapplyed expreſſions of Double, negative, pregnant, uncertain, wanting form, and the like; but to ſhew ſpecially wherein, that the other party may (as the cauſe ſhall require) either joyn in Demurrer, or amend, paying coſts, or diſcontinue his Action.

That it be declared, that matters of form, as well on the part of him that demurs, as of him that joyns in all parts of the pleading, are diſcharged; unleſs ſuch as are ſpecially aſſigned upon the Demurrer.

Concerning Tryals, and notice of Tryals and Inquiries.

IF the Plaintiff give notice of a Tryal, and he proceed not, the Plaintiff not to take it down to Tryal again, without new notice to be given unleſs by Conſent or Rule of Court.

That in caſe of ſuch warning, and no proceeding, the Defendent upon motion, to have his coſts of his former attendance, to be taxed by the Prothonotary; unleſs the Plaintiff give the Defendent warning in convenient time that he would not proceed; or ſhew cauſe to be allowed by the Court in excuſe of ſuch coſts.

Concerning Tryals at Bar.

THat for the remedy of exceſſive charges of Tryals at the Bar, eſpecially whilſt the Jury lyeth out, it is ordered that a Jury lying out one night after a privy Verdict delivered, there be allowed for the whole dyet of each Jury-man that night no more than 3 *s.* 4 *d.* a piece, and for two Tipſtaves, and one Cryer or Uſher, to each of them no more than two ſhillings ordinary, beſides the charges of the Jurors Lodging.

Concerning Special Verdicts at the Bar, and by Nisi prius.

IN finding of Special Verdicts where the points are single, and not complicated, and no special conclusion, the Counsel, if required, do subscribe the Points in question, and agree to amend the omissions or mistakes in the mean Conveyance, according to the Truth, to bring the point in question to Judgment.

That unnecessary finding of Deeds in *hæc verba*, where the question rests not upon them, but are only derivation of Title, to be spared, and found shortly, according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, *&c.*

Concerning new Tryals.

THat where a Verdict finds entire Damages, where Damages are the principal, and part not actionable, though Judgment be arrested, yet by rule of Court a *Venire fa. de novo* may issue as upon an ill Verdict, and upon the new Tryal the party may sever his Damages.

Concerning Judgments.

THat upon a cause removed by *Habeas corpus* out of an inferiour Court, having Jurisdiction of the Cause, if Judgment be given for the Plaintiff, the costs below to be considered and cast into the Judgment, if for the Defendent the charges of putting in Bail.

That in a Judgment by *Non sum informatus*, or *Nihil dicit*, in *Ejectione firmæ*, the *Capiatur* be entred upon the first Judgment.

And lastly, It is declared, That as the Court doth expect, that all the Rules and Orders beforementioned, shall be duly observed; and are resolved

ved ſeverely to puniſh ſuch as ſhall break or neglect any of them. So it is further declared, That all other former Orders and Rules yet in force, not hereby altered, ſuſpended, or adnulled, ſhall be likewiſe obſerved and put in execution according to the true intent and meaning of the ſame.

By the Court.

The OATH to be taken by every Attorney of the *King's-Bench*, before their Admittance.

YOu ſhall do no falſhood or deceit, nor conſent to any to be done within the Court of King's-Bench: *And if you ſhall know of any to be done, you ſhall give notice thereof to the Lord Chief Juſtice and other his Brethren Juſtices of that Court, that it may be reformed. You ſhall delay no man for lucre, or malice. You ſhall increaſe no Fees, but you ſhall be contented with the old Fees accuſtomed. You ſhall plead no foreign Pleas, nor ſue any foreign Suits unlawfully, to hurt any man; but ſuch as ſhall ſtand with the Order of Law and your own Conſcience. You ſhall ſeal all ſuch Proceſs as you ſue out of this Court, with the Seal of the ſaid Court, and ſee the Officer ſatisfied for the ſame. You ſhall not wittingly nor willingly ſue, or procure to be ſued any falſe Suits, nor give aid nor conſent to the ſame, upon pain to be expulſed from the ſaid Court for ever. And further, you ſhall uſe and demean your ſelf in the Office of an Attorney within this Court, according to your learning and diſcretion.*

So help you God.

The *Dutchy-Court.*

THis Court was much uſed in relation to Suits between Tenants of Dutchy-Lands, and alſo againſt Accountants and others for the Rents and Profits of the Lands, and is a Court of Record, wherein are Pleas both real and perſonal, as alſo mixt Pleadings, relating to the Dutchy-Lands.

The Chancellor of the Dutchy is the chief Judge of this Court, and next to him the Attorney of the ſaid Court, who in all difficult caſes in point of Law, is uſually aſſiſted by two Judges of the Common-Law out of one Court or other, to decide the matter or queſtion in Law.

There is one chief Clerk or Regiſter of the Court, to whoſe Office it properly belongs to have the keeping of all the Rolls and Records of the Court, and alſo of the Proceedings therein.

There are divers Auditors of this Court, of which there are two more eſpecial than the reſt: The one whereof his Office extends to all the Dutchy-Lands on this ſide *Trent*, and the other for the Lands beyond *Trent*. To thoſe Auditors doth belong the keeping of the King's Evidence; as Leaſes & Grants of the Dutchy-Land, as well of the poſſeſſions and Copy-hold, as Fee-ſimple, and Fee-farm.

Although there be divers Surveyors for the Dutchy-Land, for the ſurveying of it, yet do they not keep any Record to that purpoſe, unleſs ſome ſhort Draughts of their own framing.

Thus much for Courts of Record at *Weſtminſter*, which are for the Lommon-Law practice; come we now to the Court of Equity, which in many caſes abates of the rigour and ſeverity of the Common-Law, and is called,

THE

THE

HIGH COVRT OF CHANCERY

BRITANNICVM

CHANCERY.

IN this Court, the Lord Chancellor, or Lord Keeper of the Great Seal, is the chief Judge; and in this Court, he, or in his absence, the Master of the Rolls doth make Orders and Decrees.

The subordinate Officers of this Court are many.

The twelve Masters in ordinary, which are Assistants to the Lord Chancellor, and Lord Keeper, and sit with him, and to whom References are made, and before whom *Affidavits* are taken, and Deeds acknowledged, and Recognizances, *&c.*

The Register of the Court, who hath divers under him that sit in Court, and take notice of all Orders and Decrees made in Court, and accordingly afterwards draw up these Orders, and enter them, and sign them.

The six Clerks, in whose Office all proceedings upon Bill and Answer, unto the very Decree, and in some cases after Decree are acted, and from whom likewise issue some Patents, as for Pardon of men for Chance-medley, Patents for Embassadors, Commissions for Bankrupts; and these by their Clerks, of which each Six Clerk keeps a set number.

The Cursitors of the Court, who were incorporated by Queen *Elizabeth*, by the name of the 24 Cursitors, amongst whom the business that lies in the several Shires is severally distributed. These make all original Writs in the Chancery, which are return-

able in the Common-Pleas, and all Writs of Entry and Covenant.

The Regiſter is a place of great note in this Court, and hath ſeveral Deputy-Regiſters under him, who ſit in Court by their turns, and take notice of all Orders and Decrees made in Court, and accordingly draw up the Orders which you muſt enter, and then have a Regiſter's hand to it, and in that Office likewiſe they file the Reports of the Maſters. Then is the Maſter of the *Subpœna*-Office, and the Clerk of the *Affidavits*, where you file ſuch *Affidavits* as you uſe in Court, for without ſuch filing they are not admitted.

The Clerks of the Petty-Bag, who have many Clerks under them, and theſe Clerks have much variety of buſineſs that comes through their hands, and requires very much knowledge and experience for the managing of it.

This Office hath the making out of all Writs of Summons to the Parliament.

To this Office are all Offices that are found *Poſt mortem*, brought to be filed.

In this Office are all Pleadings of the Chancery, concerning the validity of any Patent, or other thing whatſoever, which paſſeth the Great Seal.

And theſe Pleadings are in Latin, although moſt of the reſt of their Proceedings are in Engliſh.

If any queſtion ariſe about the acknowledgment of any private Deed between Subjects, which is acknowledged in Chancery before the Lord Chancellor, Lord Keeper, Maſter of the Rolls, or any of the Maſters in Chancery.

All Statutes and Recognizances taken before any Officers of this Court, to that purpoſe deputed, are here proſecuted and tranſmitted hither.

In these Offices are all Suits, for, or against any person priviledged in the Court.

And lastly, it is as a Hand, whereby to transmit divers things from the riding Clerk, and the Inrolment-Office, to the Chappel of the Rolls.

The Examiners are Officers of this Court, who take the Depositions of Witnesses, and are to examin them, and to make out Copies of the Depositions.

There are likewise Clerks of the Rolls, who sit constantly in the Rolls to make Searches for Deeds, Offices, *&c.* to make out Copies.

The Usher of the Court, who hath the receiving and custody of all Moneys, ordered to be deposited in Court, and payeth it back again by order.

The Sergeant at Arms, who carrieth the Mace before the Lord Chancellor or the Lord Keeper, and to whom any persons standing in contempt, are brought up by his Substitutes as Prisoners.

The Warden of the Fleet attends likewise this Court, to receive such Prisoners as stand committed by the Court.

This Court consists of a double Power, ordinary, as in the case of *Scire facias*, to repeal Patents in Cases of Traverse, Endowments of a Woman, and the like; and herein the Court is limited, and confined to the Rules used in Common-Law.

The other is extraordinary and unlimited, which in Cases of Equity, wherein Relief is to be had by a Suit here, by way of Bill and Answer.

By the Power of this Court are issued forth Commissions for Charitable uses, Bankrupts, and Sewers.

Here in this Court, in some Cases, Commissions have been granted to examine Wastes, to set out meet ways for Passages, to prove a Child legitimate, to prove Customs, and to examine Witnesses *in perpetuam rei memoriam*.

It proceeds by way of Bill and Answer, in many cases this Court will give Relief against, besides, and beyond the Rules of the Common-Law, some whereof follow: As where a Charge lyes upon one man alone by the Common-Law, where, in Equity, others ought to contribute a part to this Charge: here in this case the Court will give Relief.

So likewise will the Court relieve one against another, who had falsified and broken his trust with him.

It gives Relief against the Extremity of an Engagement, where either the Engagement is without any consideration, unreasonable, dishoneſt, or discharged; or where there hath been either fraud, Force, or the like, used to procure the thing to be done.

Where by Law a man cannot be compelled to perform an Agreement, this inforces it.

This Court will restrain other Courts that take upon them a greater Jurisdiction than properly they have, and removes the Suit into this Court, which is done by *Certiorari*.

This Court will reduce the general Customs of a Mannor, to a certainty between the Lord and Tenants, or the Tenants themselves.

It will decree a recovery of Land or Money given to charitable and pious uses, and mis-imployed.

It inforces the Husband to give his Wife Alimony.

Where Creditors are unreasonable, this Court inforceth them to take a reasonable composition of the Debtor, he being disabled by irretrievable Losses, not by ill husbandry.

Where Freehold or Copyhold-Land are confounded, it will distinguish it; or if it be lost, it will give a recompence for it.

This Court will ascertain the Fines of Copy-holders.

This

This Court, (where Executors, or others, have Money in their hands, there to lye long) inforces them to give Security or Intereſt for it.

This Court will inforce the recovery of a Legacy, or force the performance of a Will.

It ſerves for the recovery of ones Land, Debt, or Duty, although he have loſt the Conveyances or Writings, by which he ſhould make his Title to it, or otherwiſe be without remedy for it.

It inforces him that hath ſold Land, and taken Money for it, aſſured by defective conveyance, to make the ſame perfect and good.

It will inforce a Tenant to attorn, to perfect an Aſſurance.

In theſe and ſuch like caſes this Court of Chancery doth always, or for the moſt part, give Relief; as you may ſee more at large in *Tothil*'s and *Caric*'s Reports.

In ſome other ſpecial caſes likewiſe this Court doth exerciſe a power, as to prevent the diſ-inheritance of an Heir, or reſtore it.

To avoid the extinguiſhment or ſuſpenſion of Rent or Common.

To prevent an Occupancy,

To avoid the Bar of an Action, by the Statute of 21 *Jac.* of Limitations.

But regularly this Court doth not give Relief where the Subſtance of the Suit by Bill and Anſwer tends to the overthrow of an Act of Parliament, made for publick peace and repoſe, or to the overthrowing any fundamental point of the Common-Law, or to overthrow and take from other Courts their peculiar Juriſdiction, or the like.

In all ſuch caſes, wherein the Plaintiff hath his remedy at Common-Law for the very ſame things, he ſhall not be relieved here.

Where

Where a Promiſe is made to aſſure Land for a certain Sum of Money, in this caſe the party may either ſue at Law for Damages, or in Chancery for the Land it ſelf.

The like caſe for a Nuſance, where the Law gives me Damages, I may ſue here to have the Nuſance removed, or the thing it ſelf reſtored; and yet there may be ſome ſpecial circumſtances in the caſe, which may make the Court retain it; as where a Suit is grounded upon a Will Nuncupative, Leaſe Parol, or long Leaſe, to avoid Wardſhip, or to eſtabliſh perpetuities, or to deſert Purchaſors, or for Brokage or Rewards to make Marriages, or for bargains at Play, or Wagers, for bargains for Offices againſt the Statute of 2 *Ed.* 6. or upon Contracts for Uſury or Simony; or if it be for land not worth 40*s.* a year, or for any thing elſe under the value of ten pounds, thoſe are regularly diſallowed here; and ſometimes upon notice taken thereof by the Court, upon hearing it is diſmiſſed, but if it ſtays longer till it comes to motion, or upon *Affidavit* only, before the cauſe comes to hearing, it is then diſmiſſed; yet there are ſome circumſtances that may make ſome of theſe retainable; as where the Suit for ſo ſmall a matter be for the Poor of a Pariſh, or the like.

In ſuch like caſes as theſe, (the matter being heard upon Bill and Anſwer, and the Proofs and Witneſſes) the Court may (without any regard to form or miſpleading, ſo as the truth, *viis & modis*, may be diſcovered) proceed to ſentence it according to Equity and Good Conſcience.

All perſons able in Law to ſue or be ſued, may in this Court ſue or be ſued.

Relief may be, and is often given againſt, or for an Infant in this Court; touching which matter, theſe things are to be known.

As to Suits againſt an Infant.

FIrſt, an Infant hath been compelled to anſwer a Bill in this Court; as in *Hare*'s caſe, *Hill* 3 *Jac.* and *More*'s caſe, 11 *Car. Tothil* 108, 109. And being but twelve years old, was bound by a Decree of this Court, 37 *Waltham*'s caſe, and upon a review decreed again, *Cromwel*'s caſe, *Mic.* 7. *Car.* and was committed to the *Fleet* for diſobeying a Decree, 12 *Eliz. Tothil.* 108, 109.

Secondly, This Court may alſo, if it pleaſeth, appoint an Infant Defendent, a Guardian to defend his Suit, *Carie*'s Reports 38.

Thirdly, A Copy-hold was ſurrendred to the uſe of an Infant; or the Infant to pay an Annuity to another at his full age, which he refuſed; it was decreed he ſhould pay it, and the arrears thereof, *Sawyer*'s caſe, 9 *Eliz. Tothil* 107.

Fourthly, *Young* purchaſed Lands in the name of *Maſon*, in truſt for himſelf and his Heirs, and dyes, not declaring any determination of his truſt, procures *Maſon* to convey it to him, being of Kin; he conveys it to Infants: *C.* ſues here as next Heir, the Court agrees, That if the benefit of the Truſt did belong to *C.* that it ſhall be decreed to him during the minority, and then that the Infant ſhall convey it. See *Carie*'s Reports 30.

Fifthly, A Mother conveyed her Leaſe to her Son in truſt, and after the Son conveyed it to his Children, Infants; and it was decreed againſt the Father and Children, becauſe done without any conſideration, *Tothil* 98.

Sixthly, Between the date and ſealing of the Conveyance of Land ſold, the Lord *Morley* paſſed it to an Infant, and it was decreed againſt the Infant and him both, 36 *Eliz.* Lady *Ruſſel*'s caſe.

Seventhly, The Father being Tenant in Tail, ſells his

his intailed Land, and leaves as much free Land to descend to an Infant, the Court ordered him, when he comes to age, to pay the Money given for the Land, according to his Father's Will; or else that the Purchasor shall have the free Land, *Tothil* 184.

Eightly, An Infant may by this Court be compelled to give a discharge of Money due to, and received by him; as in *Reyner's* case, 13 *Car.*

Ninthly, where one made an Infant Executor, to prevent the payment of his Debts, he was ordered by the Court to pay them notwithstanding, *Mich.* 9 *Jac. Tothil* 108.

Tenthly, An Infant may in some special cases by this Court be concluded by his agreement.

But regularly, if an Infant be twenty years of age, and make a contract never so much to his advantage, the Court will not conclude him, nor will the Court decree against him by his consent, or the consent of his Parents, but in some special cases upon the merit of the cause, *Mich.* 8 *Car.* in *Chancery.*

A Father being about to convey some of his Land to his younger Son, and the eldest Son promised to give the younger Son an hundred pounds if the Father would forbear it; in this case the eldest Son being an Infant, was ordered to stant to it. See *Stiles* his case, 2 *Car. Tothil* 95.

Elevently, A Surrender was made of a Copyhold by an Infant, to the use of *J. S.* for Money paid, and no help could be had there, *Hugh's* case, *Tothil* 180.

Twelfthly, If I take Bonds for my Money in my Childrens name that are Infants, I may release the Debt; and this Court will allow it, and forbid any Suit upon them.

As to Suits by, or for an Infant.

FIrſt, he ſhall have the ſame Relief upon a Breach of Truſt, Fraud, or the like, in this Court, as another man may have, notwithſtanding his minority, *Tothil* 108.

Secondly, he may ſue by himſelf, or his *Prochein Amy*, or Guardian, as the Court will order.

Relief is often given by this Court, againſt, or for a Woman under coverture, touching which theſe things following are to be known.

As to Suits againſt her.

FIrſt, ſhe ſhall be compelled to anſwer with, or without her Husband. See *Carie*'s Reports, 100, 101. *Tothil* 95, and 96.

But more eſpecially, if he be out of the Land; and ſhe ſhall be bound by the Decree of this Court; as in *Weſtdean*'s caſe, *Tothil* 93. And ſhe may be committed till ſhe do obey it, as in *Styward*'s caſe.

2. The Husband and Wife were ordered to levy a Fine, and perfect Aſſurance, *Tothil* 93.

3. The Husband was ordered to give ſecurity, that the Wife ſhould releaſe her Right to Land. See *Tothil* 92.

4. An Agreement in ſome caſes will here be ordered, to conclude her where the merit of the cauſe requireth it: As if a man have two Tenements of his Wifes, and they agree with the Tenant, That if he will ſurrender the one, he ſhall have three lives in the other, and he doth ſo, and the Husband dyes, the Wife was ordered to make it good. See *Ireland's* caſe, 37 *Eliz. Tothil* 91. But regularly it is otherwiſe; and therefore where ſhe hath Land with other Co-heirs, and ſhe with the conſent of her Husband, agrees to take a thouſand pounds, to releaſe her Right, the Judges did certifie

tifie ſhe was not to be concluded, *Trin.* 7 *Jac. Dockwray*'s caſe, *Tothil* 98. Yet in 10 *Jac. Randal*'s caſe was, That a ſingle Woman did agree, and after her marriage ſubſcribed her name with her Husband to a late Agreement, and was concluded on by this latter, by the Court's order, *Tothil* 96. But in *Slater*'s caſe, 37 *Eliz. Tothil* 92. ſhe and her Husband did article to forego her Joynture, for other recompence; and a Decree was made thereupon (but without her conſent) in her Husband's life-time; and after his death, the Court will not bind to this Agreement.

5. A Leaſe of Land was made to Friends, to her uſe, to begin after her Husband's death, and they two levy a Fine of the Lands, this will not bar them in Equity, *Trin.* 15 *Car. Liſter*'s caſe.

A. made over his Leaſe for years to the uſe of *C.* his Wife, afterwards he and his Wife ſold the Land, and levied a Fine to *D.* the Court ordered, that the Purchaſor ſhould enjoy the Land againſt the Wife after the Husband's death, 2 *Car.*

One was ſeized of Land to the uſe of a Feme-ſole, who after took a Husband, and her Husband ſold the Land, the Wife had the Money, and ſhe and her Husband deſired the Feoffee in truſt, to convey it, and he doth ſo; yet it ſeems the Court of Chancery will not bar her of the Land after her Husband's death.

The Court ordered the Husband and Wife to levy a Fine of morgaged Lands ſettled in her; the Lady *Griffin*'s caſe, 4 *Car.*

One did convey Land to her Husband in truſt, and he took the profit, and left it to his Wife, and ſhe married again; they two were ſued in this Court, and yet neither as Executor nor Adminiſtrator to her firſt Husband, as in *Ackland*'s caſe, *Tothil* 106.

As to the Suits by and for her.

IN ſome caſes ſhe may ſue her Husband, as for Alimony or Maintenance, where they be parted; but ordinarily ſhe may not ſue her Husband, nor her Husband ſue her, *Sympſon*'s caſe, *Tothil* 94, 97.

Secondly, She hath been allowed to ſue without her Husband, and without his privity, eſpecially he being beyond the Sea, *Tothil* 95.

The Woman and her Husband agreeing to part upon difference, and he giving her a Sum of Money for her livelihood, which was put into a Friend's hands for her, ſhe was allowed to ſue alone for this without her Husband, *Carie*' Reports 87.

Thirdly, She was admitted to ſue here for her duty releaſed by her Husband, gone beyond Sea, as in *Farewel*'s caſe, 32 *Eliz.* and *Barker*'s caſe, 5 *Car. Tothil* 85. As for her Jewels, the Earl of *Derby*'s caſe, *Tothil.* 96. And yet ſhe having Goods, ſhe pretended for her *Parapharnalia*, the Husband deviſed them, and it was here allowed to be good, and ſhe remedileſs, as in *Davenport*'s caſe, 5 *Car.* and the Cuſtom of *London* in this caſe.

Fourthly, If a Woman hath Goods at the Marriage, and the Husband doth uſe and diſpoſe them all his life-time, and then giveth them away, or maketh an Executor; this Court, it ſeems, will give her no relief, albeit the Husband leave never ſo good an Eſtate beſides, unleſs they be goods ſet apart, and preſerved for her livelihood, by ſome agreement, or the like, *Tothil* 55.

Fifthly, a Woman divorced from her Husband, *Cauſa frigiditatis*, ſued in this Court for her Portion. her Father being alive, and recovered it, *Barrow*'s caſe, *Tothil.* 81.

Sixthly,

Sixthly, the Wife being parted from her Husband, and having an Eſtate to her ſelf, was allowed by the Court to deviſe it by her Will, *Mich.* 15 *Car. Tothil* 97. *George*'s caſe.

Seventhly, If a Feme-ſole being poſſeſſed of a Term, granteth it over, or a Term be granted by another to her own uſe, and then ſhe taketh a Husband and dieth, in this caſe the Court ruled it to go to the Executor or Adminiſtrator of the Wife, and not to the ſurviving Husband.

A. being poſſeſſed of a Term, granted it upon a Marriage to be had between him and *R. S.* to *J. S.* her Brother, to her uſe, and after Marriage *A.* dieth, and ſhe marrieth again, and then ſhe died; *J. S.* the Brother took out Adminiſtration of her Goods, and got the Leaſe, and the ſecond Husband ſued him in this Court for the Leaſe, but the Court would not relieve him, *Paſch.* 32 *Eliz. Withernam*'s caſe in *Chancery*, *Cook* upon *Littleton*, 350.

Eightly, *A.* being poſſeſſed of a Leaſe for years, granted it to *B.* and *C.* to the uſe of *A.* and his wife, and afterwards *A.* granted away all his Intereſt to a ſtranger, and the Court would not order it againſt the Wife, *Dyer*, 369 *Crompton*'s *Juriſdictions*. 65.

A. conveyed her Leaſe for years to Leſſees in Truſt, to the uſe of her Daughters and Children: lineally, *A.* had a Daughter by one Husband, who had Iſſue, and it died, and the Husband alſo; then ſhe marries again, then the Leſſees in truſt convey the Leaſe to the Mother and her ſecond Husband, ſhe diſcharges the Truſt, and gives it to her Husband, and the Heir ſued for it,

It was ordered, that the Husband, and not the Heir, ſhould have it, *Baskerſvile*'s caſe, *Tothil* 95.

A Widow being about to marry, to prevent her Husbands diſpoſal of the Land, conveys it to Friends in truſt, who with the Husband do ſell it for a valuable conſideration, and ſhe ſued in Chancery, and the Court decreed, that the Purchaſor ſhould reconvey it to her, but ſhould firſt deduct all his Diſburſements, *Fitz James* caſe, *Tothil* 43.

A ſingle Woman, Widow or Maid, may ſue and be ſued here, as another body; of which take ſome few caſes.

1. A Widow of a Tenant in *Capite* ſued here for her Dower, and had a Commiſſion to ſet it out; as in *Wild*'s caſe, 25 *Eliz.*

No Woman ſhall recover Dower of a truſt by this Court, *Mich.* 2 *Car. Kemp*'s caſe.

When the Woman cannot tell who is Tenant to the Land, ſhe may ſue (albeit her Writ of Dower here at Law) to diſcover the Tenant, to know againſt whom to bring her Action.

A. conveys Land to *B.* and his Heirs, to the uſe of him and his Heirs, in truſt for *C.* and his Heirs, (*B.* having then a wife) *B.* dies, and his Wife ſued for Dower of the Land; *C.* ſued againſt her for relief here, and it was denied; yet the Wife of *C.* ſhould not have had Dower in this caſe; for a Woman ſhall have no Dower of a Truſt, *Hern*'s caſe, *Tothil* 9.

So *A.* delivers *B.* five hundred pounds, to put to uſe for him, and *B.* doth buy Land with it, and makes *A.* believe it is for him, and in his name, but it was in his own name: *A.* it ſeems, ſatisfied herewith, *B.* dieth, and his Wife ſued to be endowed of the Land, and the Court would give *A.* no relief againſt this Suit, *Trin.* 6 *Car.*

A Copy-holder cannot be ſued for land without the Lord, *Carie*'s Reports 57.

An Heir also here, in some cases, shall sue and be sued, further than the Law bindeth him; as in the cases ensuing.

An Heir of an Estate in tail, having Lands in fee, descended from the Ancestor, in lieu thereof is bound by Decree to pay the Purchase Money, or let the Purchasor have the Free-land, *Pearce*'s case, 8 *Jac. Tothil.* 184.

The Mother and Son bought tailed Land of her Ancestor, to the Plaintiff, some of the Money due on a Bond which is lost, the Court thought fit to charge the Mother and the Son, because of the land in their possession.

The Father sold his entailed lands, but had little for them; it seems the Heir may compel the Purchasor to give the worth, by the power of this Court, *Tothil* 182.

The Father articled for land, the Son no Party, but consented to it, and it was decreed against him, *Paul*'s case, *Trin.* 4 *Jac. Tothil* 69.

A Deed not inrolled was decreed against the Heir of the land, *Tothil* 55.

The Father conceiving his land to be Free-hold, gave part of it to a younger Son, and it fell out, that there was an old sleeping Deed of Intail, and yet it was ordered the younger Son should have it, *Pountney*'s case, *Tothil* 54.

Executors may charge or be charged in Equity, further than the Law doth charge, wherein as to Suits or Acts by them, take these ensuing:

1. Here they may sue one another, *Tothil* 8.

2. One of them may sue an Executor of an Executor, if he hath gotten the Estate in his hands, *Brierton*'s case, 6 *Jac. Tothil* 87.

3. Two Executors be, the one doth disagree, the Act of the other shall bind in Equity, as it doth in Law.

As

As to Suits againſt Executors, take theſe things.

FIrſt, One Executor alone, without the reſt, may be ſued here, but he ſhall be charged for no more than he hath, *Harbage*'s caſe, 35 *Eliz. Toth.* 86.

Secondly, An Executor ſhall be bound by Decree againſt the Teſtator, *Hill.* 5 *Car.*

Thirdly, He muſt pay coſts adjudged here againſt the Teſtator, if he have Aſſets.

Fourthly, He ſhall not be charged here for a Treſpaſs done by the Teſtator, *Holland*'s caſe, *Tothil* 84.

Fifthly, Nor may he be compelled here to give bond to perform the Will, without ſpecial cauſe be ſhewed; as that he is decayed in Eſtate, or hath broken the truſt already in ſome particulars, or the like, *Brown*'s caſe, 32 *Eliz. Tothil* 36.

Sixthly, He may be here ordered to pay a Debt by Word, before a Debt due by Specialty, *Tothil* 53.

One Joynt-tenant, or Tenant in common, may here have relief againſt another.

The Father may here have relief againſt his own Son, in caſe of breaches of truſt for a Leaſe, *Paſch.* 1597. *Dormer*'s caſe.

Of Truſt.

A Uſe of Truſt was, and ſtill is, either of Land, or of Goods, and both theſe are either expreſſed or implied.

A Uſe of a Truſt of Land was a truſt repoſed in another, that he ſhould ſuffer him that did truſt, to take the profit of it, and he that was truſted, was to diſpoſe the Land according to the direction of him that truſted him: As when a Feoffment was made to *J. S.* and his Heirs: to the uſe of *W. S.* and his Heirs: here *J. S.* had the Eſtate and property of the Land; but *W. S.* had, or was to have the profits in honeſty and equity. So if one had ageeed

with *W.S.* for a piece of Land for 20 *l.* paid, and had no assurance, yet the equity of the Land was in the Contractor.

The use of Goods is when one man hath them in trust for another.

The use of Goods or Land expressed, is when the use or trust is expressed between the parties upon the making of the Estate; implied, when it is not declared upon the Agreement, but left to the construction of Law; as if I bargain and sell my land, levy a Fine, make a Feoffment, or suffer a Recovery of my Land without Money, and no use expressed, this, in Law, is to my own use.

But if it be for Money, it shall be to the use of the Bargainee, Conusee, Recoverer, or Feoffee.

If it be without consideration, that I conveyed my Land by Feoffment to *J.S.* to have and to hold, to him and his Heirs, to the use of his Heirs, in this case *J.S.* and his Heirs have the use in Law.

To every of those Uses there are two inseparable incidents; Confidence in the Person, and Privity in the State expressed by the Parties, or implied by the Law: And when either of those failed, the use was either gone for ever, or suspended for a time at the least; and therefore if the Feoffee to Use upon good consideration, had infeoffed another of the Land, that had notice of the Use, the Use had been gone for ever; because howsoever there was a privity of Estate, yet there was no confidence in the Person; but if the Feoffment had been without consideration to such a one, in this case the Use had remained still, because the Law did imply a notice: So also, it seems, the Law was, when it was made, in consideration of Marriage only.

As if a Disseisor, Abettor, or Intruder had come to the possession of the Land, whereof the Use

was

was, albeit he had notice of the Uſe, yet the Uſe was ſuſpended during their poſſeſſion, and they ſhould not have been ſeiſed to the Uſe, as the Feoffee was, for they come not to the Land in the *Per*, but in the *Poſt*.

If a Lord by Eſcheat, Lord of a Villain, or one that had entred for *Mortmain*, or that had recovered in a *Cuſtodivit*, *&c.* had come to ſuch Land, and had notice of the Uſe, the Uſe had been gone for ever; for thoſe come to the Land in the *Poſt*, and above the Uſe.

And the Tenant in Dower, and by Courteſie, ſhould not be ſeiſed to Uſes in being, for all theſe wanted privity of Eſtate.

And if there had been Tenant for Life, the Remainder in Fee, in the Uſe of another; and the Tenant for life had made Feoffment in fee to one that had notice of the Uſes, this ſecond Feoffee ſhould not have ſtood ſeized to the firſt Uſes.

So if the Husband had made a Feoffment in fee of the Land of his Wife, upon conſideration, and without any Uſe expreſſed, the Wife ſhould not have had a *Subpœna*, becauſe the Feoffee was not in privity of the Eſtate of the Wife.

And if *Ceſtuy que uſe*, for Life or in Tail, the Remainder in Tail, with divers Remainders over in Uſe, had made a Feoffment to one that had notice, he ſhould not have been ſeized to the firſt Uſes.

But now at this day by the Statute 27 *Henry* 8. *cap.* 10. the Uſe of Truſt, and the poſſeſſion of Lands, are for the moſt part united; and in all ſuch caſes where they are united, and the Uſe executed by the Statute, the Chancery doth not intermeddle, but leave them to the Law. And ſuch is this, where one ſeiſed of Land in fee, doth convey it to

the uſe of one and his Heirs, or Heirs of his Body, or for life, or to the uſe of one of his Executors or Adminiſtrators for years.

But there are ſome Uſes and Truſts ſtill that are not executed by the Statute, and thoſe remain as they were before, and are in the conuſance and order of the Chancery, as where Lands are conveyed without conſideration in Fee-ſimple after this manner, that the Feoffee and his Heirs ſhould take the profits and deliver them to the Feoffors and his Heirs; or that the Feoffee ſhall account and give the profits to the Feoffor, or that the Feoffee ſhall convey the Land to the Feoffor, or to his Heirs, at the age of 21 years, or where it is conveyed to *J. S.* and his Heirs, in confidence that *J. S.* ſhall alien it to whom the Feoffor, or to whom *W. S.* ſhall appoint, or the like: Or where the Lands be conveyed to certain uſes expreſſed, and there no other ſecret uſes be agreed upon between the Parties.

So where the Land is conveyed to one without conſideration to one and his Heirs, without expreſſing any uſe or intent, this is to the uſe of the Feoffor, who may diſpoſe of it as he pleaſeth; but if it be to any intent certain, as to take back an Eſtate with Remainders to others, &c. here he cannot change it.

Theſe, and ſuch like Uſes and Truſts, are not within, nor executed by the Statute, but they remain as they were before the Statute; for all the State is in the party truſted, and the Grantor, or he to whoſe uſe the Grant is, hath nothing but a Uſe, for which he hath his remedy only in Chancery, where matters of this nature are determinable; for it is a Rule, That as the Queſtions of Uſes and Truſts that are within the Statute, are to be decided and ruled by the Judges of the Common Law; ſo

all

all other Queſtions of Uſes and Truſt, that are out of the Statutes, are to be ruled and decided by the Court of Chancery, *Cook* 1.138. *Dyer* 369.356. *Crompton's Juriſdiction* 65. 58, 59. And that Court in ruling thoſe caſes, doth proceed much after the Rules they went by in the regulating of Uſes at the Common Law, before the Statute.

Before the making of the Statute, theſe amongſt others, were the Laws of Uſes:

1. The Feoffor was to take the profits of the Land, and he might have diſpoſed of it in his life time, or at his death to whomſoever he pleaſed; and his Friends in truſt were to ſettle it accordingly, or be inforced to it by *Subpœna* in this Court; and if he did not diſpoſe it, the Uſe was to go to his Heirs, and if he had died without Heirs, or diſpoſition, it ſeems the Feoffee ſhould have had the Land.

2. If the firſt Feoffee had conveyed it to a ſecond Feoffee, to the ſame uſe, or to a ſecond Feoffee that had notice of the uſes; in theſe caſes the ſecond Feoffee had it to the ſame uſes: But if the Feoffee had ſold it *Bona fide*, or conveyed the Land to one that had notice of the Uſes; in theſe caſes the uſe had been gone, and he to whoſe uſe it was, remedileſs for the Land.

3. A Bruit of a Truſt, or ones ſaying, there was a Truſt to another, I being about to buy the Land, becauſe he would not have me to buy it, it ſeems is not ſufficient; but a Suit about it, and proof of it in Chancery, is ſufficient notice to him that ſhall buy it.

4. If the *Ceſtuy que uſe* had appointed the land to be ſold by his Feoffees to pay his Debts, the Creditors might have compelled the Feoffees to ſell it; if he in his life-time, or by Will at his death, had appointed them to convey it to *J.S.* *J.S.* might have compelled them to it, and ſo their heirs.

5. The Feoffees (if any occaſion had been) were to bring or defend any Action for the Land, and to plead ſuch Pleas, as the Feoffors ſhould appoint, to be inforced in the Chancery to it.

6. If the Feoffor die, and the Land deſcend to his Heir, the party to whoſe uſe, &c. as it ſeems, had no remedy againſt him.

7. If the Feoffee, or Donee to uſe, ſell to one that knows of the uſe, the *Subpœna* ſhall go againſt them both, or otherwiſe againſt the party truſted only, who muſt make a recompence for the breach of truſt, if the Land be gone.

Theſe, amongſt others, were the Rules by which Uſes at Common Law were guided; and much accordingly are Uſes now executed by the Statute of Truſts of Lands and Goods ordered and guided at this day; as in the caſe following, of Inheritance and Free-holds, of Chattels and Goods.

Of Inheritance and Free-hold.

IF I without any conſideration enfeoff one and his Heirs of Land, to the intent he ſhall take the Profits thereof, and deliver to me and my Heirs: Or to the intent he ſhall account to me and my Heirs for the Profits thereof; or to the intent he ſhall reconvey it to me and my Heirs; or to my Heir at 21 years old; or to the intent that he ſhall alienate it to *L. M.* and his Heirs, or to whom I ſhall appoint; or I convey it to certain uſes expreſſed, but there are other ſecret uſes agreed upon between us: In all ſuch like caſes which are out of the Statute of Uſes, this Court of Chancery, if any Complaint be, will order the parties truſted to perform the Truſt.

If I, without any conſideration, bargain and ſell my Land by Indenture to one and his Heirs, to the

uſe

uſe of another and his Heirs (which is a Uſe upon a Uſe) it ſeems the Court will order this: But if it were in conſideration of Money by him paid, here (it ſeems) the expreſs Uſe is void, both in Law and Equity.

And if a Woman, in conſideration of four hundred pounds paid her by her Son, bargain and ſell her Land by Indenture to him and his Heirs, to the uſe of her ſelf for life, and after of the Heirs of her Son; in which caſe, by Law, the Fee-ſimple is to the Son preſently, and the uſe for life to the Mother void; nor is there, as it ſeems, any relief for her in this Court in a way of Equity, becauſe of the conſideration paid; but if there were no conſideration, on the contrary, *Tothil* 188.

A voluntary Conveyance was made to Friends in Truſt, to the uſe of a Man's own Children, with a Remainder over; the Feoffor being indebted much Money, the Court enabled him to ſell part of it to pay his Debts, *Grant*'s caſe, *Tothil* 43.

If one that hath Land in truſt, convey it to one that had no notice of it, and he convey it to one that had no notice of it, in this caſe he that had no notice is ſeized to the firſt uſes, *Pill*'s caſe, *Tothil* 186.

If one convey his Lands to Friends in truſt, and after ſell the Inheritance, the Truſt in Equity goes to the Purchaſor, *Tothil* 44.

Copyhold was ſurrendred to the uſe of *J.S.* to the intent that he ſhould pay an Annuity to a third perſon, the which he refuſed, the Court ordered him to pay it, with all the Arrears, *Tothil* 107.

Of Chattels real, and Term of years.

IF I be ſeized of Land in fee, and convey it to *D.L.* and his Heirs, to the uſe of *W.S.* his Executors and Adminiſtrators, for 20 years, or for any other number of years; In this caſe the Uſe will

will be executed within the Statute: But in case where I be possessed of a term of years in being, and grant it to Friends to any uses and purposes in trust, this is out of the Statute of Use, and orderable in the Chancery only; where, if the trust be broken, I must have remedy.

One possessed of a term of years, conveys it to Friends in Trust, to the use of *D.* for life, and after, of the Heirs-males of his Body; in this case the Court resolved and ordered, that *D.* so long as he hath an Heir may dispose of it, and that an Intail of, or out of a Chattel, is not good: but a Remainder in tail of a Trust may be ordered in Equity, the Judges agreeing to it, *Tatton*'s case, 2 *Jac. Tothil* 33.

The general Trust of an Executor is to pay Debts and Legacies, and for the surplusage to account to the Ordinary, *Ad pios usos.*

Henry Earl of *Derby*, conveyed certain leased Lands in trust to *Doughty* his Servant, for payment of his Debts; and upon a mediation of an end of Controversies between the Daughter of *Ferdinand*, eldest Son of *Henry*, Earl, and *William* his youngest Son, now Earl, it was ordered and agreed, that *William*, the now Earl, should pay all his Fathers Debts: Whereupon *Doughty* conveyed all those Leases to *William*, and after the Creditors sued him in Chancery, but had no relief, and were ordered to pursue their remedy against Earl *William*, *Hill.* 1 *Jac. Caric*'s Reports 25.

The Plaintiffs Wife conveyed away her Estate to the Defendent her Son before Marriage, and after the Defendent conveyed it to his Children; in this case the Court conceiving it to be done without any consideration, did decree it for the Plaintiff, against the Defendent and his Children, *Povey*'s case, *Tothil* 98.

Of

Of Chattels Perſonal, or Goods.

IF I deliver Money or Goods, or cauſe a Statute, Bond, or other eſpecialty to be made to another to my uſe, or to any purpoſes or intents in truſt, and he perform not the truſt, I may compel him to it, or to give me recompence for the breach of the truſt here; and therefore, if he diſpoſe the Money or Goods to his own, or any other uſe than I appointed it, or will not diſpoſe it according to my mind, or releaſe, or diſcharge the Duty, my remedy is by *Subpœna* in this Court, and if in theſe caſes the Goods or Money be taken from him, or he have any injury from them, he muſt ſue for remedy, and I may compel him to it here, 7 *Edw.*4. 14. 29. *Crompton's* Juriſdiction 43, 62, 65. *Brook*, Feoffment 60.

If a Statute be made to *A.* and *B.* to the uſe of *A.* alone, and the Conuſor get a Releaſe of it from *B.* alone, in this caſe *A.* ſhall have remedy here againſt them both (as ſome ſay, againſt *B.* only, and not againſt the Conuſor.) See *Carie's* Reports 14, and 15.

Of Bargains and Agreements, or Promiſes.

ARticles of Agreement were briefly drawn between two, and their hands to it, for the ſale and aſſurance of Lands for Money, the Seller refuſed, and upon complaint here, was ordered to make the Aſſurance according to the Agreement; the manner of the Aſſurance referred to a Maſter of the Chancery, *Chiver's* caſe, *Hill.*4 *Car.*

ASuit was brought here upon a Parol Agreement, to execute an Aſſurance of Land upon a Marriage Agreement; the caſe thus:

A Suitor to *B.* the Brother of *A.* comes to *B.* and tells her, that if ſhe will marry his Brother, he will aſſure her of 20 *l.* a year Land for her Joynture, and ſhe did marry him, and after he refuſed: It

was

was decreed in this Court and the Court of Requests both, that he ſhall be compelled to it; and where it is ſaid, that heretofore the Chancery did not uſe to decree Parol Agreements for aſſurance of land, it is now otherwiſe, for where there is any execution of it, by payments of all, or any conſiderable part of the Money for the land, there the Court doth decree it.

In the *Exchequer* one ſued by Engliſh Bill upon a Parol Agreement, to have land aſſured; and ſhewed that he had provided two thouſand pounds (the Purchaſe-Money) to his great loſs, &c. and the other refuſed to aſſure the land: In this caſe the Court would not decree the aſſurance of the land, but decreed he ſhould pay the Plaintiffs Damages for his loſs. So in 13 *Car. Oliver*'s caſe.

The Agreement was to convey the land, as Counſel ſhould adviſe, the Paper-book drawn, and agreed on to be ingroſſed, and then the Seller refuſed to proceed: In this caſe the Court would not declare it to be done, becauſe no Articles nor Money paid, but a bare Parol Agreement; and yet ſome ſpecial circumſtance may make this binding; and therefore a verbal Agreement between a Lord and Tenant, becauſe the Tenant was an ancient Tenant, and hath been at charge of building, was decreed; *King*'s caſe and *Hunt*'s caſe, *Tothil* 65, 66.

A. covenants with *B.* upon the Marriage of his Daughter, to levy a Fine of the land to *D.* and the Daughter being dead, and ſome of the Money unpaid, *A.* ſold away the land to others: In this caſe he was ordered for 100 Marks to make the Eſtate good, *Mich*, 8 *Car. Paget*'s caſe, *Tothil* 47, 48.

A Bill was preferred here, ſuppoſing 10 *s.* paid, and 2000 *l.* to be paid for land, to have the land aſſured;

aſſured; and upon Demurrer it was over-ruled, becauſe it may be, to prepare for an Action of the Caſe; but it ſeems in this caſe the Court would not decree the Aſſurance, *Trin.* 38 *Eliz. William*'s caſe, *Tothil* 72.

The Cuſtoms of a Mannor were in queſtion between Lord and Tenants, and Tenant and Tenant: And a general Agreement made by Deed indented and inrolled here, and a Bill to eſtabliſh it, and nothing could be found but the Deed; and yet the Court would not alter it, albeit it was objected, that the Lord was at the time of the Agreement, Tenant in tail, and ſome of the Tenants Infants and Femecoverts, *Carie*'s Reports 22.

If one enter into a Statute to *J. S.* who doth afterwards by Indenture of Agreement, promiſe and agree with the Conuſee, that in caſe the Conuſor did fail of payment, execution ſhould be done upon ſome certain land only: In this caſe, if after it he ſhall ſue execution upon any other lands, the party grieved may have relief here, and compel him to perform his Agreement, and have Injunction alſo, if he deſire it, *Pulvertoft*'s caſe, *Carie*'s Reports 37.

The Plaintiffs Bill was, that he leaſed a Houſe to the Defendent, and did covenant to repair it, and then the Defendent did covenant to keep it ſo; and that the Defendent, as well to make the Plaintiff break his Covenant, as to free himſelf from his Covenant, did interrupt and threaten the Workmen, ſo that they durſt not go on, and ſo the Houſes are decayed, and the Plaintiff without remedy. The Defendent demurred, pretending the Plaintiff had remedy by Law, but it was over-ruled and put to anſwer, *Carie*'s Reports 59.

A Bill was brought to be relieved againſt the Defendent, as Brother and Heir; for that the Plaintiff had

had paid to his deceaſed Brother 34 *l.* for a Leaſe, and he died before it was made, and therefore deſired his Leaſe or his Money, and was relieved, *Carie*'s Reports 77.

One Joynt-Tenant promiſed the other, lying on his Death-bed, he would not take advantage of the Survivorſhip, but ſuffer him to diſpoſe of it by his Will, by which he deviſed part for the payment of his Debts, and the Survivor was ordered to make the Eſtate accordingly, *Carie*'s Reports 81.

The Plaintiff bought of the Defendent the Reverſion of a Copy-hold which he could not enjoy, as was confeſſed by the Defendents anſwer; he was ordered by the Court to ſhew cauſe why he ſhould not repay the Money back again, which he had received on the Bargain, *Carie*'s Reports 93.

One brought his Bill to be relieved here upon a Promiſe made to him by the Defendent, to ſurrender a Leaſe upon the payment of a hundred Marks; and becauſe the matter was meet for the Common Law, he had no relief, *Carie*'s Reports 95, 97.

The Bayliffs of a Town promiſed a Leaſe, the Court upon this would not give any relief againſt any of their Succeſſors, but againſt the ſame perſons, as common Perſons, *Carie*'s Reports 103.

What Miſpriſions in Conveyances, or other Deeds, are relievable here.

WHere there is any miſtake in a Deed, ſo that it is not made in purſuance of the intent and agreement of the party, this Court gives relief.

If the word Heirs being in Fee-ſimple, or the like, be omitted, or that part of the land bought and ſold be left out of the Deed, and that it do appear that the conveyance was made upon good conſideration, the Court in this caſe will rectifie; See to this purpoſe *Carie*'s Reports 16, and 17.

Dean

Dean and Chapter of *Briſtol* made a Leaſe, miſtaking the Corporation; and the Court held, that for Leaſes made for ſome time of continuance, and upon good conſideration there ſhould be given relief here, *Carie*'s Reports 32.

The Leſſee in the Leaſe was not named in the Premiſſes of the Leaſe, but in the *Habendum* only; decreed to be good; and being referred to the two Chief Juſtices and the Chief Baron, was by them certified to be good in Law, *Butler*'s caſe, 22 *Eliz.* *Carie*'s Reports 88.

One brought his Bill here to be relieved, for that he had conveyed by the Deed more land than was intended, and agreed; In this caſe, becauſe it appeared that the Defendent was a Purchaſor, upon a valuable conſideration, the Court would not relieve the Plaintiff, *Clifford*'s caſe, 4 *Jac.* in Chancery: and yet where more lands paſſed by a Fine than intended, the party was relieved here by the Judges conſent, *Carie*'s Reports 20.

Miſtakes in making of a Bond in either of the parties names, may be holden here, *Colſton*'s caſe, *Tothil* 7.

If a Power be reverſed to make Leaſes by a Covenant, without tranſmutation of the poſſeſſion, no help can be here, becauſe it is void in Law: and if it be upon a change of poſſeſſion, and the power be not preciſely followed, that is, doubtful, and rather more ſtrong againſt help, for then the Eſtate works, and the power gone, and upon Wills no help. See *Carie*'s Reports.

If one be bound to me for Money, and the ſame day after the ſealing of the Bond, I give him a Releaſe for other things, which by miſtake is made too general, whereby this Bond is alſo releaſed; in this caſe I may be relieved here, and I ſhall receive

receive the Money notwithſtanding, *Top*'s caſe, *Tothil* 27.

Haddam the Husband, was ordered to procure his Wife to levy a Fine, and to enter into a new Bond of 500 *l.* becauſe the old Bond was worth nothing, by the miſtake of the Writer, 10 *Jac. Tothil* 140.

Where an Aſſurance of Land is made defective, this Court will inforce the perfecting of it.

WHereas a Conveyance is made for Lands or Tenements, and it is found defective, and the Eſtate not well executed to the Purchaſor, according to the intent of parties, for lack of words ſufficient in the Deed, or for livery of Seiſin, Attornment, Inrolment, or the like, and there was a good conſideration given for the land; in ſuch like caſes the Court, in behalf of the Purchaſor, will compel the party in whoſe power it is, to perfect the Eſtate, *Tothil* 44, 48. 182, 183, 138.

Where a man for Money, or other valuable conſideration, ſells land to one, and the word *Heir* is left out in the *Habendum*; in this caſe the party who ſells ſhall be compelled to amend it: And ſo when leſs is granted than was intended, and ſo for many other miſtakes, *Carie*'s Reports, 16, 17.

A Meſſuage was demiſed (*cum pertinentiis* only) and becauſe ſundry lands had been occupied formerly therewith for the ſame Rent, and by leaſe of the ſame words, the Lord Chancellor *Bromley*, and the Judges order, it ſhall all paſs, though perhaps in Law they will not paſs by theſe words; but it ſeems in ſuch like caſes it is very conſiderable in Equity, what the value of the land is, and what Money is given; for if the Houſe with the Appurtenances be ſufficient for the Money, unleſs the intent of the party were to grant the whole; it ſeems agreeable

to

to Equity that there ſhould be no further Extent made of the words, than what the Law makes.

The Anceſtor takes Money for a leaſe, and dies before it is made, the Heir muſt make it good, or repay the Money, *Carie*'s Reports 7.

Where a man for Money, or other valuable conſideration, ſells lands by Deed, but livery of Seiſin is omitted, I may compel him afterwards to do it by this Court: So likewiſe, if upon the ſame conſideration he ſell me land in two Counties, and give me livery of Seiſin of the land only in one County, this Court will order him to make livery of the land in the other County, or pay back part of the Money, *Carie*'s Reports 17.

Where a Conveyance is imperfect through the want of the Tenants Attornment; the Tenant in this caſe ſhall be compelled by this Court to attorn, and ſo it was decreed in *Hillary* Term, 3 *Car.*

A. was Leſſee for 21 years, and leaſed to *B.* for ten years, rendring Rent, *A.* without the privity of *B.* did grant the Reverſion to *C.* and *B.* refuſed to attorn; and *C.* thereupon ſued *B.* in Chancery, to compel him to attorn: And in this caſe it was decreed by the Maſter of the Rolls, that he ſhould attorn and pay the Arrearages: But Juſtice *Whitlock* then Aſſiſtant, was utterly againſt it; and of his opinion were the two Chief Juſtices, Chief Baron, and Juſtice *Dodridge*; but they all agreed, the parties themſelves to the Aſſurance may be compelled to make livery; and it hath been often denied here to compel him to attorn, who is at liberty by Law, eſpecially where the party quarrelleth at the Tenants Eſtate, or entreth into part of the Land, or hath covenanted for Recompence, in caſe of not Attornment, *Carie*'s Reports 4.

Where the Conveyance is made without good consideration, this Court of Chancery *will give no relief.*

FOr instance, where there is a Rent granted, and no Deed to warrant it, and nothing is given for it, or a Reversion is granted, and nothing is given for it; this Court will not inforce the Grantor to perfect it.

Where an Estate was made by Covenant, and not good by Law, it was ordered by this Court to be made good, *Prince*'s case, 40 *Eliz. Tothil* 85. But the consideration was valuable.

A Deed which was not inrolled, was by this Court decreed against the Heir of the land; but agreed, it should not bind any other Estate challenged by Survivorship, or otherwise, *Paul*'s case, 14 *Car. Tothil* 54.

A Bill was here exhibited, to be relieved against the Defendent, who would have avoided an Estate for lack of Livery of Seisin; and it appear'd that the Plaintiff had enjoyed it quietly 25 years: In this case it was decreed he should continue the quiet possession without Livery of Seisin, *Kidon*'s case, 17 *Jac. Tothil* 54.

Upon Promises concerning Goods and Debts.

WHere there is a Contract made for Goods or Chattels, wherein the Contractor hath any wrong done him, if he gives (*quid pro quo*) that so it appears there is a good consideration in it: In this case the Contractor may be here relieved; but on the contrary, where there is no consideration, for there is *Nudum pactum, & ex nudo Pacto non oritur Actio.*

Where a man makes a Promise without consideration, to build a man a House, or make him such or such Goods, he shall not here be compelled to it, *Crompton*'s Jurisdictions 49.

A ſpontaneous and general Promiſe, without any conſideration, was made by the Son to pay his Father's Debts, (no advancement coming to him by his Father) he being ſued here the cauſe was diſmiſt, *Alexander*'s caſe, 7 *Car.*

Where the Obligee agrees with the Obligor, to give him Day for payment of Debt, and he ſueth him or his Surety before the Day given, here this Court will relieve him.

What Relief ſhall be had where there is extremity uſed, upon a Statute, Mortgage, Bond, or other Ingagement.

WHere a man by way of Mortgage conveys Lands to another for Security for Money lent; in this caſe, albeit the time of Redemption be paſt, yet upon paying of the principal Money, Intereſt and Damages, he may have the Land again by Decree of this Court; yet where the Mortgage hath been of long continuance, as of twenty years or upwards, this Court will hardly give back the Land, unleſs in ſome caſes extraordinary: And if the Mortgagee make a Feoffment of it to a ſtranger, and ſo extinguiſh the condition, unleſs it appear to be to the end to pay the Debt, the Feoffee (perhaps) may not have this advantage, *Carie*'s Reports 53. *Crowther*'s caſe, 39 *Eliz. Tothil* 79.

A Copy-holder in Fee, ſurrendred to the uſe of one and his Heirs, upon condition of Redemption; after this computing his Debt, and writing them down, he doth Will part of his Land ſhall be ſold to pay his Debts; after his death, one of the Creditors doth pay the Money at the Day of the Mortgage, yet the Surrender was inrolled, and another Creditor ſued him and the Heir here, and had a Decree that the land ſhould be ſold to pay the Debts, and if any remained, it ſhould go to the Heir, *Carie*'s Rep. 7.

Where there was a Leſſee for years rendring Rent, and two men ſtriving for the Reverſion, he exhibiting his Bill againſt him, upon payment of his Money into the Court, according to his Leaſe, he had an Injunction to forbid them both any further to trouble him, *Carie*'s Reports 46,47.

Where the Conuſee of a Statute extends the Lands in the hands of one of the Purchaſors, and ſpares other Purchaſors: In this caſe he may be compelled to extend upon the whole in all their hands, *Carie*'s Reports, 111,112.

Where a man grants a Rent-charge out of all his lands, and after ſells it by parcels to divers perſons, and the Grantee force one only to pay it; the party ſo paying it may here be relieved, and force the reſt to contribute, and the Grantee to take no more of him than what is anſwerable to his proportion of land; but in ſuch caſe he muſt be ſure he make all that have bought any of the land, Deſendents; that ſo he may make them chargeable with the Rent; and then they muſt ſhew cauſe why they ſhould not contribute, *Carie*'s Reports 2,23,92.

When the Conuſee in a Statute, or Plaintiff in a Judgment, hath received ſatisfaction, the Plaintiff in Chancery, or Conuſor, his Heirs, Executors, or Adminiſtrators; or a Purchaſor charged or chargeable by it, may force him, if he be living, or his Executor, or his Adminiſtrators, if he be dead, to acknowledge ſatisfaction upon the Judgment, or to deliver up the Statute: And if Statutes be very ancient, and nothing done upon them, this Court will inforce the Owners of them to deliver them up without ſatisfaction. In like caſe, this Court will force the delivery up of old Bonds, *Tothil* 178,179. *Carie*'s Reports 145,146.

Where the Plaintiff had Judgment and Execu-

tion

tion against the Defendent for three hundred pounds, he was by this Court ordered to take it out for one hundred pounds only, *Carie*'s Reports 51.

Where a man upon an Obligation, &c. either at or after the day, according to Law, hath paid any Money, and hath no Acquittance for it; or have otherwise, at, or after the day satisfied it, and hath no Acquittance for it, and it appears the Obligee hath accepted it, and is satisfied, and yet keeps the Bond, and refuseth to give the party a discharge; in these cases, he or his Executors, &c. after his death, may inforce him, his Executors, &c. after his death, in this Court to discharge, and to deliver up the Ingagement, *Carie*'s Reports 74, *Tothil* 26, 27.

Where a man doth his utmost endeavour to pay Money at the day; and to that purpose, after he hath provided it, he is robbed, or let by some other chance, and afterwards makes tender of it in some short time: So where part of the Money is paid, and yet the whole Ingagement lies, and the party that hath it doth refuse to deliver it up, or to receive the rest of his Money, it being tendred shortly after the Day, or acknowledge what is paid, &c. *Carie*'s Reports 1.

So where the Bond is to do any thing other than the payment of Money, and the thing is done, and the condition performed, *Carie*'s Reports 45, 46.

Where a man takes a double Security for one and the same debt: As where he takes a Bond or a Bill, and Goods in Pawn, or any thing of the same nature; this Court will inforce him that hath taken this double Security to deliver up one of them, *Tothil* 26, 27.

Where I appoint a Scrivener to put out and receive my Mony, and by my direction he doth receive

the Money due upon a Bond at the day, and the Bond remain in my hands, and I refuſe to deliver it up, this Court will inforce the delivery of it up, *Hunt*'s caſe, 22 *Jac. Tothil* 175.

Where a man enters into a Bond, or any other ingagement for Money unlawfully gotten; as at Dice, or Cards, or upon a cheating Contract, or the like; this Court will ſee him relieved againſt it, and have it took up, or cancelled, *Tothil* 23, 24.

Where a man gives an Ingagement for that that is nothing worth, and which is neither gain to the Obligor, nor loſs to the Obligee; as for Debts, things in Action not recoverable, here this Court will give relief.

A. had a Son he intended to preſent to the Church of *Dale*, and he being ſickly preſented *C.* for the preſent, taking Bond of him for 600 *l.* to reſign upon requeſt; *C.* is inſtituted and inducted: After the Son *A.* becomes healthy, and *C.* is required to reſign; he refuſed, his Bond is ſued, and he comes into this Court for relief, it was denied to him, and the Bond is agreed to be good in Law and Equity, *Trin.* 6 *Car. Wood* and *Berrie*'s caſe in Chancery, *Tothil* 26, 27.

Where a man makes a Bond not to marry without the conſent of Friends, and the Bond becoming forfeit, is ſued; it ſeems this Bond is not good, and this Court will give the Obligor relief, *Tothil* 26, 27.

Where Money is paid upon the Redemption of a Mortgage by Indenture, without taking any Acquittance, this Court will inforce the Mortgagee to bring in the Indenture to be cancell'd here, *Carie*'s Reports 17.

The Son and the Father were bound to the Defendent in 500 *l.* to ſtand to the award of the Lord Chief

Chief Juſtice, who ordered that the Son, who was Plaintiff and had the Reverſion in fee, and the Father who had the Eſtate for life, ſhould make Aſſurance as the Defendent ſhould reaſonably deviſe. The Defendent in purſuance thereof, tendred an Aſſurance to the Father to be ſealed; who being old and blind, deſired time to adviſe with his Friends; the Plaintiff the Son ſealed, and the Father did afterwards offer to ſeal, and then the Defendent ſaid, he did not care for his Seal, but he put the Bond in Suit upon the Father's refuſal formerly, and it was ſtaid by the Order of this Court, *Carie*'s Reports 105.

In any of the afore-recited caſes, if the Party to whom ſuch Ingagement is made, make uſe of it in any other Court by way of Suit againſt him that entred into it, he may in this Court by Injunction ſtay the Suit, and ſhall have the matter ordered here, as in Equity is fit to be done, *Tothil* 23, 24, *Suckling*'s caſe, 11 *Car.*

This Court gives relief againſt the Injuries of other Courts of Juſtice, by their over-nice and ſtrict obſervation of the Rules of the Law.

Where there is an Extremety uſed againſt a man upon a Judgment had againſt him in any Court at Law, for Money or Land; this Court, although it will not make void the Judgment, yet will it order the perſons, as it ſhall ſee cauſe in Equity; and this was reſolved upon a ſpecial Debate by the Kings Command in 14 *Jac.*

The Heir coming into his Father's Houſe, had of his Father's Goods worth five ſhillings, and the Defendent ſued a Bond of 500 *l.* againſt the Heir, as Executor of his own wrong, and proving he ſold or gave away the Goods, a Verdict paſſed for the whole 500 pounds, which appearing by the Certifi-

cate of the Justices of Assize, an Injunction was granted to stay all proceeding in this Action, and to forbid any new Action till the Court have determined the matter, *Carie*'s Reports 49.

A Debt upon a single Bill satisfied, and the Bill not delivered, was sued, and Execution gotten, and the party was by this Court relieved, 22 *Eliz. Owen*'s case, *Carie*'s Reports 74.

If one man do unduly get a Judgment in any Court in the name of another, relief may be had here, *Carie*'s Reports 76.

A drunken man being sued by another for words spoken in his drink, tending to Defamation, sough for relief here, but could have none, *Qui peccat brius, luat sobrius*, *Carie*'s Reports 93.

One exhibiteth his Bill for relief upon an Obligation of 300 *l.* which he entreth into, conditioned for the making a Joynture to his wife, upon condition of 174 *l.* promised to him by the Defendent in Marriage, which was never paid to him; he is sued at Common Law upon the Bond: In this case an Injunction was ordered to stay proceedings, *Carie*'s Reports 112.

In what Cases the Tenant Copy-holder shall be relieved against the hard dealing of the Lord of the Manor.

FIrst, If the Lord will out his Tenant that pays his Rent, or does his services; or if the Tenant surrender in Court, to the use of another, and the Lord refuse to admit him, to whose use the surrender was made, or will not keep Court for the benefit of his Copy-holder, or exact uncertain Fees, they being certain; this Court in these cases will give relief.

Secondly, If he will not admit the Tenant Copy-holder upon a Descent.

Thirdly,

Thirdly, If the Tenant Copy-holder be outed of his Copy-hold, and the Lord will not hold a Court whereat he may ſue for his Right.

Fourthly, If a falſe Judgment be had againſt a Tenant Copy-holder, and he petition to the Lord to redreſs it, and he refuſe it.

Fifthly, If the Tenant Copy-holder petition the Lord to grant him a Licenſe to let, and he refuſe it.

Sixthly, a VVoman Copy-holder for life, the Reverſion is granted to two for their lives, *cum poſt mortem, vel foris-facturam* of the VVoman, it ſhall happen, and ſhe take a Husband that doth ſurrender to the firſt in Reverſion, who is admitted and dieth, and after the next deſireth admittance, and could not have it, but the Lord entreth as an Occupant, (as he might) and the Husband and VVife were willing to ſurrender to him in the Reverſion for life, and the Lord refuſing to keep a Court, or leave the poſſeſſion, was ordered to do both in this Court, *Tothil* 34, 44, 45. *Carie*'s Reports 3. *Kitchin* 82, 89.

A Copy-hold granted by the Lord, at a Court held out of the Mannor, made good againſt the Lord by Decree of this Court, *Mark*'s caſe, *Tothil* 45.

VVhere the Lord impoſes an unreaſonable Fine upon his Tenant upon a ſurrender, &c. the reaſonableneſs of the Fine ſhall be here adjudged of, and this Court will give relief. A years value of the land hath been here allowed good, *Carie*'s Rep. 54.

This Court gives relief to the Surety againſt the principal Debtor or Creditor.

VVhere there is a Debtor with a Surety and Creditor, and the principal Debtor and Creditor by compact and agreement without the privity of him who is Surety, continues the Debt after the firſt day of Payment, when the Surety doth ſuppoſe it to be paid: In this caſe this Court will compel

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the Creditor to take his relief from the principal Debtor, and discharge the Surety, his Heirs, Executors,&c. *Mile*'s case, 5 *Car. Hare*'s case, 10 *Jac. Saunder*'s case, 10 *Jac. Tothil* 181.

Where there is a Detainer of any Lands, Deeds, or Goods, this Court will give relief towards the discovery and recovery of them.

As where a man hath Title to lands, and intends to bring his Action, but cannot discover who is Tenant to the land: in this case he may sue the Occupier in this Court, and he will be inforced to shew what he, or any under whom he holds Claims, to his knowledge, and then he may know whom to sue, and upon what grounds.

Where the Defendent held beyond his Term, this Court inforced him to shew what Term his Lease was for, *Mich.* 6 *Car. Tothil* 183.

The Conusee of a Statute did by the power of this Court inforce a Lessee for years, to declare all the particulars of his Lease, that so he might discover whether it were extendable or not, 11 *Car. Tothil* 183. *Creswel*'s case, *Tothil* 9. *Carie*'s Reports 16.

Where Writings are detained from a man, if the Court do see cause, it will enforce the Defendent to bring the Writings into Court by a *Duces tecum*, *Carie*'s Reports 43, 52, 53, 57.

This Court gives relief for the recovery of Land, Debt, or Duty, where the Law gives none.

Where a man hath a just Title to Land, but hath lost his Conveyances, this Court will give relief for the recovery of his land, *Carie*'s Reports 24. *Gossat*'s case.

Where a man hath ã good Title to Rent, but no means to gain it; as if the Rent be seck, and he never had Seisin of it, or any other Rent wherein he hath

hath had no Attornment of the Tenant, or ſuppoſing the Rent is by ſome accident (without any recompence for it) diſcharged: So if it had been uſually paid, but I can ſhew no Deed for it: In theſe and the like caſes this Court will give relief for the recovery of it, *Tothil* 72. 172, 173.

Where a man hath a Debt due to him upon Eſpecialty, and hath loſt his Writing, or cannot come at it; In this caſe, if he have witneſs to prove it, he may be relieved here for the recovery of it, *Carie*'s Reports 25.

Where an *Elegit* was returned and filed, and the time thereof elapſed, and yet the Plaintiff unſatisfied of his Debt, this Court will give him relief by reviving the *Elegit*, *Tothil* 179.

Where a man makes a Will with ſeveral Deviſes, this Court will direct how they ſhall be taken and performed in Equity.

The meaning of a Will is to be performed here, *Cob*'s caſe, *Tothil* 141.

Where there was a Deviſe void in Law, by reaſon of a miſrecital of a Grant, and lack of an Attornment, this Court did here decree it to be good, *Bacon*'s caſe, *Tothil* 79.

This Court doth give relief againſt a fraudulent practice to avoid a Leaſe, *Carie*'s Reports 18, 22.

So likewiſe to avoid a Debt, *Carie*'s Reports 18.

This Court will give relief in avoiding Conveyances fraudulently made; as where there is a Suit depending between two for land, and the Defendent hanging the Suit, make ſecret Conveyances of the Land, this Court will order him to diſcharge the Land thereof, *Tothil* 108. *Harbine*'s caſe, *Toth.* 9.

Thus much ſhall ſuffice to have ſpoken concerning the generality of the Cauſes the Court of Chancery takes notice of, in which for your further ſatisfaction

I refer to the Reports of Mr. *Tothil*, and Sir *G. Carew*.

It remains we should now come to the Practick part of it, which directeth for the most part their whole manner of Proceedings; wherein, for method sake, we will begin with their first Process, called

Subpœna.

THis *Subpœna* is the leading Process of this Court, as to the procedure by Bill and Answer, and this doth require the Defendent's appearance in this Court by a certain day, under a certain pain, to make answer to the complaint of the Plaintiff, which is indeed the Bill, which formerly was wont to be put in before the *Subpœna* was sued forth, but now otherwise used; this is called a *Subpœna* to answer, and distinguished by that name, in respect there are seven other *Subpœna*'s in order to further Proceedings; as a *Subpœna* for costs, a *Subpœna* to make a better answer, a *Subpœna* to rejoyn, a *Subpœna* to hear Judgment, a *Subpœna* for Witnesses to testifie, &c. a *Subpœna ducens tecum, &c.* for Writings, Evidences, &c.

Touching the *Subpœna* to answer, you must be very careful there be no mistake in the body of the Writ, for that may prejudice the Plaintiff, and the Defendent may take advantage, if he find any; but if there be a mistake in the Label only of the Writ, no advantage is to be taken by it.

This Writ may be made returnable three ways. either upon the common days of Return; as from the day of *Easter*, in 15 days, &c. or upon a day certain, after any of the usual Returns, or after any of the great Feasts, from whence the Returns take their names.

This word (*Next*) must be added where it is requisite; as where the great Feasts be either to come or past.

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The Writ of *Subpœna* is to be ſerved before the Return thereof be paſt, which they uſually do, either by the delivery of the Writ it ſelf under the Seal, to the perſon of the Defendent, or by ſhewing the Writ under Seal to him, delivering him a Note or Label of the day of his appearance; and this is more uſual when there are more perſons than one in the *Subpœna*, whereby the body of the Writ may be reſerved to be left with the laſt.

Or elſe the Writ may be left at the Defendents dwelling-houſe with one of his Family, or at his place of reſidence. See *Collection of Orders, &c.*

It is conceived it may be a good ſervice to leave the Writ hanging upon the Door of the Houſe, or to put it into the Houſe under the Door, or within the Window of the Houſe where the Party doth dwell, or uſually reſide. But that is where it is preſumed, it afterwards comes to his hands, or that he might be in the houſe at the time, or had notice of it.

Where a *Subpœna* is ſerved on the ſelf-ſame day whereon it is returnable, it is a good ſervice if it be before Noon, and the riſing of the Court in Chancery; and the Defendent ſo ſerved, ſhall be bound to an Apparance with all ſpeed.

Where a *Subpœna* is had againſt a Husband and Wife, and the Husband alone is ſerved, and hath notice that it is againſt him and his wife, this is a good ſervice as to both, and for want of Apparance, an Attachment may be had, either againſt the wife only, or againſt both. To which purpoſe, ſee *Carie's* Reports, 89, 101, 103, 106, 109, 110.

The *Subpœna* being ſerved, the Bill muſt be put in in due time; or elſe if the Defendent appear, and no Bill be filed, they will get coſts. To prevent which, take notice what time is prefixed for exhibiting the Bill after the day of the Return of the *Subpœna*.

If

If the *Subpœna* be returnable upon a general Return-day, as *Craſtino*, *Octabis*, *Tres Menſ. &c.* after ſuch or ſuch a Feaſt, then hath the Plaintiff time to put in his Bill until the ſecond Day before Noon next following the fourth Day following, every one of the ſaid Returns; and you muſt account the Return-day, and the fourth Day after it, for two of the ſaid four Days.

But where the *Subpœna* is returnable upon ſuch or ſuch a certain day of the Month, then the Bill may be filed the ſecond day after it before Dinner.

Where the Bill is not filed, and the *Subpœna* returnable on a day certain; as on one day of the Month, the Defendents appearance being entred, his Attorney may prefer coſts the next day after: And if the Bill comes not in the next day after coſts ſo preferred, before Noon, or preſently after Dinner, the Defendent is diſcharged with ſuch coſts as the Maſter of the Court taxes him.

Where the *Subpœna* is made returnable on a Return-day, in ſuch caſe, the next day after the fourth day is Coſts-days; and if the Bill come not in the next day at Noon, or preſently after Dinner, (the Defendent having preferred his coſts the day before) is diſcharged from attendance with his coſts.

Where the coſts are not voluntarily paid for want of a Bill, either by the Plaintiff himſelf, or his Clerk, to the Defendent or his Clerk, in ſuch caſe the Defendent may have a *Subpœna* whereby to command the Complainant preſently upon ſight thereof to pay the Defendent, or the bringer thereof the ſaid coſts: And this *Subpœna* muſt be ſerved on the Plaintiff perſonally, and upon ſuch ſervice, if the Complainant do refuſe to pay the ſaid Coſts accordingly, in ſuch caſe the Defendent may (upon *Affidavit* made, that the *Subpœna* for coſts was ſerved)

ſerved) have an Attachment directed to the Sheriff of the County where the Complainant lives, to attach the Complainant for the ſaid coſts.

And if the Sheriff of the County make Return upon that Attachment, that the Complainant cannot be found, then an Attachment with Proclamation may be ſued forth againſt him: And that Proclamation being likewiſe returned by the Sheriff as aforeſaid, then a Commiſſion of Rebellion may be ſued forth againſt the Complainant.

On the other ſide, if the Plaintiff do in due time file his Bill, and the Defendent appeareth not the next day after Coſts-day, then the Complainant upon Oath made, that the Defendent was ſerved with a *Subpœna*,, may have an Attachment, and further Proceſs, in caſe the Sheriff return, The Party is not to be found,&c.

The *Affidavit* that muſt be made of the ſervice of the *Subpœna*, muſt be made according as the manner of the ſervice was; for if the *Affidavit* made do not prove a good ſervice, as before is ſet forth, no Attachment can be had upon it, and therefore he muſt ſwear as followeth:

That he delivered the *Subpœna* to the Defendent, or that he ſhewed the *Subpœna* to the Defendent, under the Seal of the Court, and delivered to him a Note of the day of his appearance, or a Label of the *Subpœna*.

Or that he left the *Subpœna* at the Defendents Dwelling-houſe or Lodging, where the Defendent moſt abideth.

Or he may make *Affidavit*, that he heard the Defendent confeſs that he was ſerved with a *Subpœna*.

If the party that make *Affidavit* can ſwear, that he ſaw another (naming him) to ſerve the Writ as before; this will be ſufficient to maintain the Attachment.

There

There can be no Attachment regularly made out against the Defendent for not appearing, until there be a certain and positive Oath made of the time, place, and manner of serving the *Subpœna*, inserting the Return of the Writ.

And where any person served with a *Subpœna* doth injury or wrong, either by word or deed to the party who acted in service of it, or doth set at nought or contemn the Writ it self, or the authority of the Court from whence it issues, upon Oath made thereof, and motion thereupon, such person shall be committed to the *Fleet*, &c. *Carie*'s Reports 19, 92, 110.

Where there is apparance made by the Defendent within the time limited, and the Bill filed: In such case the Complainants Attorney may give unto the Defendents Attorney on the said day after the Costs-day a Rule, that the Defendent do make answer to the Complainants Bill by the same day seven-night then next to come. This rule and day must be entred into the Rule-book, and in case the Defendent fail to make answer, by that prefixed day so entred, or if he do not otherwise satisfie the Court by shewing insufficient cause and occasion of his delay, then the Complainants Attorney may have an Attachment against the Defendent.

Now this writ of Attachment cannot be duly had, but where the *Subpœna* foregoing is duly obtained and served, for if the *Subpœna* be counterfeit, or if true, and not legally served, this writ of Attachment in these cases is unduly obtained, and the Defendent arrested by it, upon disclosing the matter to the Court, will be discharged thereof.

An Attachment duly gotten, for not appearing, may not be discharged, till the Defendent have first paid twenty shillings costs, if the serving of

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the *Subpœna* were upon his person, otherwise it is ten shillings, and every succeeding Process double so much: And upon payment thereof he is to be discharged of course. See *Carie's* Reports 32, 72, 79, 94, 105, *Tothil.*

The Husband appeared; and the Wife not: an Attachment was granted against them both; *Abel's* case, 19 *Eliz. Carie's* Reports 65.

So he alone appeared, and put in a Demurrer in both their names, without excusing her, Attachment was granted against both, *Spicer's* case, *Carie's* Reports 39.

The Defendant made Oath, he could not answer without sight of Evidences, and had time given him, and then afterwards put in a Demurrer: This Writ went out against him; *Pasch.* 21 *Eliz. Farmer's* case.

Where the Defendent is served with a *Subpœna*, and afterwards for not appearing, an Attachment issues against him; if he do not appear upon the Attachment, and the Sheriff do thereupon return (as in the like cases he doth) a *Non est inventus*, then there will issue forth against him a Proclamation of Rebellion, wherein observe that this Process of contempt, and all Attachments in Process are to be discharged upon the Defendant's payment, tender to, and refusal of it, by the Plaintiff's Clerk of the ordinary cases of Court, and filing of his Plea, Answer, or Demurrer, as the case is, without any motion in Court: And if the Plaintiff do prosecute the contempt afterwards, the Defendant will be discharged with costs.

Where an Attachment is had, if the Sheriff do not make his Return, a day will be given, and if he do not by that time, the Court will set an Amerciament upon him. See *Carie's* Reports 44, 77, 78. *Collection of Orders, Tothil* 15.

Where any party is attached, and afterwards proclaimed, and he comes not in, but ſtands further out in contempt, in ſuch caſe a Commiſſion of Rebellion may be iſſued out againſt him for the apprehenſion of him, and bringing him to the *Fleet*, (the proper Priſon of this Court.)

This Commiſſion of Rebellion is ſometimes directed to the Sheriff, and ſometimes to private perſons, as in the caſe of *Cage* and *Elrington*, *Trinity* 3 *Jac. Tothil.* 37.

This courſe is likewiſe taken againſt thoſe that make not obedience to Orders or Decrees, to pay coſts or the like.

Where thoſe private perſons who are made Commiſſioners, having taken the perſon in contempt, ſuffer him to eſcape, they themſelves will be committed till they bring him in, as in the caſe of *Sacheverel* againſt *Sacheverel*, *Hillary* Term 18 *Jac. Tothil* 38.

If any perſon reſcue one taken upon a Commiſſion of Rebellion, the Reſcuer is to be committed.

Where the Commiſſioners upon Commiſſion of Rebellion, let the party in contempt go where he liſt, whereby he made an eſcape, they were ordered to be committed to the *Fleet* till they pay the Debt. See *Nelſon*'s caſe againſt *Yelverton*, in *Trin.* 18 *Jac. Tothil* 39.

Where the party appears not, but ſtands further out in contempt, a Sergeant at Arms may be ſent out to take him, and if he cannot take him, or that he reſiſt, or having taken him he make an eſcape, and ſo perſiſt high in his contempt, in ſuch caſes a Sequeſtration may be had of his Land: And if the Suit be for Land, to be delivered to the Plaintiff by the Sheriff, or by other Commiſſioners for that purpoſe, as in the caſe of *Boles* againſt *Walley* and his Wife, *Carie*'s Reports, 38, 58, 105, 106.

We

We proceed now to Bill and Answer.

THe Plaintiff's Bill is in effect the same that the Declaration after apparance had, is, either in the King's-Bench or Common-Pleas, and lays down the cause of his complaint in Chancery, being such usually as is exempt from remedy at Common-Law, for that they insert commonly those words in the Bill, that the Plaintiff hath not remedy at Law.

This Bill, by the practice of the present times may be put in after the *Subpœna* is both taken out and served, provided it comes in within the time before limited, to prevent costs.

Upon one and the same *Subpœna* served, two Bills may be put in, provided the matter contained in them appear not to be one and the same cause, for if it do so, one of them may be dismissed with costs, and where two Bills are so put in containing several matters, the Defendent must answer them both.

This Bill in Chancery, and all subsequent pleadings and proceedings upon it, must be succinct and short, and not stuft with repetitions of Deeds, Writings or Records, (*in hac verba*) but the effects and substance of so much of them only as is pertinent and material to be set down, and that in brief terms, without long and needless traverses of such things which are not traversable, tautologies, or impertinencies.

It must not likewise contain any matter criminal or scandalous against the Defendent, or any other, and if it do, and concern the Defendent, he may refuse to answer it; and the Plaintiff and his Counsel whose hand is to the Bill, may be punished for it, and the party grieved may recover costs against such Connsel, to be taxed by a Master of the Court of Chancery.

This Bill must be put in under Counsel's hand, who is carefully to peruse it, if at least they be not

drawn by himself, and see that it be such as is before directed, and likewise the Counsel must take care that it be such for the matter of it as the Court will allow, and take cognizance of, and then he is to sign it.

Where any Bill contains matter not proper for this Court to give Relief in, the Bill will be dismissed, and so likewise will it be if there wants Counsel's hand to it, or if the Counsel's hand be counterfeited or disallowed. See *Carie*'s Reports 89.

To this Bill in Chancery filed, the Defendant is to make answer, wherein many times he makes much delay, but in all cases of delay, he must upon Oath satisfie the Court of the causes of such his delay, which may be in several respects; as,

First, where the matter contained in the Bill is such to which he cannot give answer, without conference had with some other persons named in the Bill, or to whom the Bill refers.

Secondly, where the Bill chargeth the Defendant with having of Goods or Chattels of the Complainants, to make discovery what they are; in such case the Goods being in the Countrey, and he here, he may make Oath he cannot make perfect answer to the Plaintiff's Bill, without sight and perusal of the Goods: So likewise, where he cannot make direct answer, without sight of some Evidences or Writings which he hath in the Country, he may make Oath thereof; but in such cases, that place in the Countrey where those parties live, Goods, Writings, or Evidences lye, must be above twenty miles from *London*, for else he must answer within eight days after his appearance, unless further time be given him by Order.

Upon Oath made as aforesaid, then this answer will be spared till the first day of the next Term following.

There

There may likewiſe Oath be made by another perſon, either his Solicitor, Servant, or ſome Neighbour to the Defendant, that he is ſick, or diſabled for travel without danger of life.

Upon ſuch Oaths made as aforeſaid, if the Plaintiff refuſe to allow of a *Dedimus poteſtatem* on the behalf of the Defendant, for the taking his Anſwer in the Country; this Court of Chancery upon motion or petition will order it, and the order that is ſo obtained muſt be carefully entred into the Regiſter's Office, and the *Affidavit* upon which the Order is grounded, muſt be filed in the *Affidavit*-Office.

Where the Defendant doth not appear, or that after he hath made his appearance, he doth not anſwer within the time limited him, nor by way of excuſe ſheweth any the reaſons aforeſaid, in ſuch caſe an Attachment is as aforeſaid, awarded againſt him, which Attachment muſt be entred into the Houſe-Book of the Six Clerks Office, and likewiſe in the Regiſter-Book, expreſſing the cauſe of the iſſuing of the ſaid Attachment.

Where there is no day by Rule given to the Defendant to anſwer, in ſuch caſe the Defendant is at liberty to anſwer at any time during the Term.

And where the Defendant makes default within that time to make anſwer, then an Attachment may be ſued out againſt him of courſe, and the ſame with the cauſe thereof (as before) muſt be entred with the Regiſter, *viz.* That the Defendant appeared, and went away without any Anſwer.

Where the *Subpœna* is made returnable ſo near the end of the Term, that there cannot be a day given to the Defendant to anſwer: In ſuch caſe the Defendent muſt at his peril anſwer by the ſame day ſeven-night next following the day of his appear-

rance, although it be out of Term, for the Court of Chancery is always said to be open.

But where the *Subpœna* is returnable on the last Return-day of the Term it self, then the Defendent is at liberty to appear the first Return of the Term following.

But where the *Subpœna* is returnable upon a day certain, although the day be the last day of the Term, the Defendent is bound to appear, and yet answer by that day seven-night next following the said apparance.

'Upon a *Subpœna* returnable *immediatè*, the party 'is bound to appear, but if he do not answer, no At-'tachment can be made out against him till the 'Term following.

In all cases where the Defendent either makes oath, that he cannot answer without Writings, Evidences, *&c.* or conference with some other person, or that he have a *Dedimus Poteſtatem*, and a Commission to take his answer in the Country, the Defendent must at his peril procure his answer to be put in before the day after the first costs-day of the next Term following, unless it be in *Trinity*-Term; then in such case it must be put in the second day after the second Return, or otherwise the Complainant's Attorney may upon such his default make an Attachment against the Defendent for not answering by the day prefixed.

Where the Defendent lives in the Country, and hath a *Dedimus Poteſtatem* granted him for the taking of his Answer to the Plaintiff's Bill, it hath been formerly the course, that in case the Counsel find cause of Plea or Demurrer, that then the Defendent should move or petition to have a special *Dedimus poteſtatem* by order to answer, plead, or demur, for that the Commissioners upon an ordinary

Dedimus,

Dedimus, had not power to take any thing but an anſwer.

But by the late Collection of Orders it is ordered, that where the Defendent is ſerved with a *Subpœna ad reſpondendum*, and obtaineth a Commiſſion to anſwer in the Country, he ſhall without more words have the ſame liberty thereby to anſwer, plead, and demur, as he had by the Original Proceſs, if he could have appeared in perſon, See *Collection of Orders*, 39. afterwards.

Where the Defendent doth demur, or put in any juſt Plea which he hath, to the diſability of the perſon of the Plaintiff, or to the Jurisdiction of the Court under the hand of learned Counſel, it will be received and filed, although the Defendent do not deliver the ſame in perſon, or by commiſſion.

And if the Defendent do not put in his Demurrer or Plea, into the Paper of Pleas and Demurrers, in the Regiſter's Office appointed for that purpoſe, within eight days after the ſame is put into the Court, that ſo the ſaid Demurrer may be argued before the Lord Chancellor, as it ſhall fall in courſe; and where this is omitted to be done, the Plea and Demurrer is over-ruled of Courſe, and the Plaintiff may take forth a *Subpœna* againſt the Defendent, to enforce him to make a better anſwer, and an order for coſts according to the laſt Rules and Collections of Orders.

Where a man exhibits his Bill in Chancery, and dyes, the Suit depending, whoever have the Intereſt in the thing complained for, whether Heir, Executor, or Adminiſtrator, they may put in a Bill of Revivor againſt the Defendent; or in caſe the Defendent dye, the Plaintiff may exhibit his Bill of Revivor againſt the Heirs, Executors, or Adminiſtrators of the Defendent.

Where there is a Bill of Complaint exhibited against a man and his wife, and the Matter contained in the Bill wholly concerns the wife, and they both make answer unto this Bill, and after they have made answer the Husband dyes, in this case a Bill of Revivor must be brought by the Complainant against the woman if he intend to proceed in that Suit; and the reason is, for that the woman shall not be constrained to abide by that answer, which she together with her Husband, or solely as wife to the man, had formerly made unto the Complainant, for that she was at that time under coverture.

And in case she survive her Husband, and continues possessed or seised of the things in controversie in *statu quo*, she may, as she shall think fit, make a new answer, and shall not be bound up or concluded by that answer, which she made during coverture, or solely as wife unto the man: And yet if she thinks fit, she may stand to that former answer of hers, and proceed accordingly in that Suit.

Where the Plaintiff exhibits his Bill in Chancery against a Feme-sole, and she appearing makes answer to the Bill, and afterwards marrying, she comes under coverture, the Suit depending; in this case the Plaintiff may proceed against her and her Husband, and shall not need any Bill of Revivor, and her Husband shall be bound by that answer, which she made whil'st a Feme-sole, for that she shall not advantage her self by her own Act.

Where on the other side the the Feme-sole Plaintiff exhibits the Bill, and the Defendent makes answer unto it, and afterwards she intermarrieth, here there can be no further proceedings by the Husband and Wife without a Bill of Revivor, because she hath abated her Suit by her own act of Marriage, of which the Defendant may take his best advantage.

Where

Where the man and the wife exhibit a Bill of complaint, and to this the Defendant answereth, and the man dyeth, the woman shall be at her choice, whether she will exhibit a new Bill, or proceed upon the Bill by her Husband and her self formerly exhibited.

Where there are two seised of joynt Estates, or where they are Executors of one Will, or Obligees, or Obligors; and they prefer a Bill in Chancery, to which the Defendant makes answer, and after one of them dyes, here the Survivor may proceed in his Suit against the Defendant, and shall need no Bill of Revivor.

Note, that the Bill of Revivor must pursue the first Bill exhibited, for where there is any variance between them, the Defendant may be discharged, and the Bill will be dismissed.

Where there are Administrators *Durante minore ætate* of an Infant Executor, in the nature of a Guardian, and they sue on the Infant's behalf, and the Suit depending the Infant comes to age; here, it seems, needs no Bill of Revivor.

Where the Complainant hath exhibited his Bill of Revivor, and hath procured thereupon a *Subpœna* to be served; he will be upon this in the same case as the Predecessor was, when the Bill first accrued, unless some good cause to the contrary (as that he is not the Heir, Executor, nor hath the like interest, *&c.*) can by the Defendant's Answer be shewed.

Where a man doth wilfully refuse to answer, and stand out all process of contempt, the Court will take the matter of the Bill *pro confesso*, and decree it, *Tothil* 69.

If the Answer be good to common intent, the Plaintiff must reply and prove the matter if he can

can; and not insist upon the insufficiency of the answer.

No exception can be taken to answer after a Replication put in, for it is then admitted to be good, but before Replication it may be excepted against in eight days after coming in, or may have longer time to except by order to that purpose to be obtained.

But where it is excepted against, the causes must be shewn in writing, and delivered in to the Plaintiff's Attorney or Counsel the same Term the answer comes in, or within eight days after; and if he amend it in eight days, he is to pay no costs.

Where an answer is excepted against to be insufficient, it is usually referred to a Master, to consider of the Exceptions, and he to certifie the Court whether it be Insufficient.

If the Master certifie it to be insufficient, then the Plaintiff may take out Process for costs, and the Defendent's answer is not to be received, till he hath paid the costs.

The first Answer being returned insufficient, the Defendent must pay forty shillings single costs.

If it be an Answer that came in by commission, and be insufficient, he must pay fifty shillings.

The second Answer insufficient pays three pounds.

The third five pounds costs, and you may have a *Subpœna* both for your costs, and to make a better Answer.

But in these cases of Exceptions, the insufficiencies appearing in the same Exceptions, are the point to be insisted on, and no new Exceptions may be moved. Where the Master upon reference to him finds the Answer to be sufficient, and accordingly certifies it, there the Plaintiff must pay forty shillings costs.

If

If the Exceptions to an Anſwer be put in after the Term, there ſhall be time given to Anſwer them until the fourth day of the next Term, unleſs the Court haſten it.

If the Anſwer comes in by commiſſion, and be not good, no new commiſſion will be admitted but upon Oath of the inability of the perſon, and his payment of fifty ſhillings coſts, as before.

Where a cauſe goes to hearing upon Bill and Anſwer, the ſame muſt be admitted to be true in all points, and no other Evidence is to be admitted, but what is matter of Record, to which the Anſwer doth refer, and which is proveable by Record it ſelf, *Carie's* Reports 78, 30.

Concerning Demurrers and Pleas, take theſe Rules following.

FIrſt, a Demurrer is always where there is matter defective contained in the Bill, or where there is foreign matter.

The Plea of foreign matter may be of two ſorts; Either where it is to the Juriſdiction of the Court, or to the diſability of the perſon, as where the Plaintiff is outlawed or excommunicated, or where there is in this or any other Court, a Bill or Suit depending for this very cauſe.

Or it may be that the cauſe hath been formerly diſmiſſed this Court, or the like.

Or if the matter of it appear upon Record, it may be put in without Oath, otherwiſe not.

In caſe it be a Demurrer, it muſt expreſs the cauſe of the Demurrer, yet other cauſes may be inſiſted on at the time of the determination thereof by the Court.

If the Demurrer be over-ruled, the Defendent ſhall pay five marks coſts, where it is allowed, the Defendent ſhall have no coſts.

If

If one plead a Plea that is insufficient, and so overruled to be, as where it is an Outlawry pleaded, and it prove not a good Plea, he must pay five marks costs.

An Utlawry is not to be pleaded, unless you plead the Record, *sub pede sigilli*.

A Plea of Utlawry, if it be in a Suit for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed; but otherwise it is allowed, and will be in force to hinder all the Plaintiff's proceedings, till it be reversed.

But when it is reversed, the Plaintiff upon payment of twenty shillings costs, may upon a new *Subpœna* served, put the Defendant to answer the same Bill.

Where the Plaintiff conceives the Plea for matter or manner nought, he may put it to the Judgment of the Court.

Where a man pleads for a former Suit, he need not set it down with the Register, but it shall be referred to a Master to certifie (which must be done within a Month upon the Plaintiff's procurement) and if the Master doth certifie against the Plaintiff, he must pay five shillings costs: If there be no Report within a Month of filing the Plea, the Bill will be dismissed of course, with seven Nobles costs.

If the Demurrer to any Bill be put in upon any slip or mistake in the Bill, the Plaintiff of course laying down to the Attorney twenty shillings costs, may amend his Bill within eight days after the Demurrer put in, but not after that time.

If the Demurrer be admitted by the Plaintiff to be good within eight days after the filing of it, and he doth pay the Defendant his Attorney, or Clerk in the Court forty shillings costs, then the Defendant

dent ſhall not need to attend his Demurrer, but the Bill ſhall ſtand diſmiſt of courſe without motion, unleſs both ſides agree to the amendment of the ſame, but ſuch diſmiſſion is to be no bar to a new Bill to be exhibited by the Plaintiff.

Where the Plaintiff finds ſufficient cauſe for an Order in the Anſwer, he may go to hearing thereupon without further proof, (of which he ſhould be well adviſed) in which caſe he muſt procure his Attorney to preſent the ſame in courſe, to be ſet down to be heard upon Bill and Anſwer: But in caſe the Court ſhall not find grounds to make a Decree or final Order, the Bill ſhall be diſmiſſed with coſts, or the Plaintiff admitted to reply, if he deſire it, firſt paying down five pounds coſts, within four days after ſuch hearing, then the diſmiſſion to ſtand, and the concluſion of the Order upon hearing is to be penned by the Regiſter accordingly, and then ſuch diſmiſſion ſhall be a good Plea in Bar of any new Bill for the ſame matter.

Where a Plaintiff proceeds ſo far as to proof, and upon the hearing it clearly appears the Plaintiff might have had full relief upon Bill and Anſwer, albeit he be relieved in the cauſe, yet he ſhall pay coſts. See more fully of theſe things in the *Collection of Orders*, 16, 18. *Caric's* Reports 39, 87.

Replication, Rejoynder, and Sur-rejoynder comes next to be handled.

THe Replication is the Speech of the Plaintiff, in way of Reply to the Defendent's Anſwer.

The Rejoynder is the Defendant's Anſwer to the Plaintiff's Replication.

The Sur-rejoynder is a ſecond Defence to the Plaintiff's Action, oppoſite to the Defendent's Rejoynder.

Firſt

First, the Replication muſt be ſhort relating to the ſubſtance of the Bill, and it muſt avoid ſuperfluous and criminous matter.

Secondly, The Replication muſt affirm and purſue the Bill, and confeſs, and avoid, traverſe, or deny the Anſwer.

Thirdly, the Rejoynder muſt purſue and confirm the Anſwer, and muſt ſufficiently confeſs, or avoid, or traverſe every material part of the Replication.

Fourthly, no new matter muſt be put into the Replication, and ſo much matter only is neceſſary to be here as will avoid the matter of the Anſwer.

Fifthly, if upon the Anſwer there be ſo much confeſſed, that the Plaintiff need not to draw into Pleading, and prove all the points, he muſt ſee to it, and reply and go to proof, only in thoſe particulars in queſtion, and neceſſary to be proved.

Sixthly, when the Defendent doth demur, or diſclaim to any Bill exhibited againſt him, the Plaintiff cannot reply. And if the Defendent in thoſe caſes be ſerved with a *Subpœna ad rejungendum*, having before made no other Anſwer, but a Demurrer or Diſclaimer, he ſhall have coſts for his unjuſt vexation.

Where the caſe is ſuch, that the parties cannot come to iſſue, by reaſon of ſome new matter diſcloſed in the Defendent's Rejoynder, that required to be anſwered unto, the Plaintiff may ſur-rejoyn to the Re-joynder, and the Defendent likewiſe to the Sur-rejoynder, if there be cauſe.

As for the time for the Replication to be put in after the Anſwer, you are to obſerve, that the Plaintiff hath time for all this Term, and all the next Term, and until the beginning of the ſecond Term following, to put in his Replication.

The next Term after the Anſwer is put in, the De-

Defendent may give the Plaintiff rule to reply: and if ſuch rule be given, and the Plaintiff reply not, coſts will be given againſt him.

And where he gives another Rule, and the Plaintiff doth not reply the ſecond Term after the Term the Anſwer is put in, the Bill will be diſmiſſed with coſts of courſe.

But in caſe the Plaintiff doth reply, and that the Replication be in Court, the Defendent can have no coſts.

In caſe where the Complainant hath replyed, the Defendent may if he will rejoyn *Gratis* to the Replication, and force the Complainant to joyn in Commiſſion.

Where the Plaintiff intends to go to Commiſſion, he muſt ſerve the Defendent with a *Subpœna ad rejungendum*, before he can have commiſſion to examine Witneſſes, and upon return of the *Subpœna ad rejungendum* and Oath made of the ſerving of it, the Plaintiff may by entring Rules, force the Defendent to rejoyn and joyn in commiſſion, or to go on to the examining of witneſſes without him; for having given him ſeven days to rejoyn, if within the time he refuſe to do it, he cannot do it after.

In ſuch caſe where the Defendent is ſerved with a *Subpœna ad rejungendum*, and does not upon the Plaintiff's Clerk's demand to the Defendent's Clerk, deliver Commiſſioners names by the end of the Term, wherein this *Subpœna* is returnable, there the Plaintiff may without motion or petition, give names, and take the Commiſſions, *ex parte*. See *Carie*'s Reports, 111. and Collection of Orders in Chancery.

The

The manner of joyning in Commission, and executing of it.

IN the joyning of this Commission to examine witnesses, the Complainant must first name one Commissioner, unto whom the Defendant may give general exceptions.

The Defendant is to name the second.
The Complainant the third, and
The Defendant the fourth.

The Plaintiff is likewise to have, first the taking out and carriage of the Commission, as oft as any is sued out, and he or his Commissioners must give either in person or by a note left in writing, at the place of the usual abode of the other party, fourteen days notice to him, of the time and place of executing the Commission, & if there be default then made by the Plaintiff or his Commissioners in the execution thereof, he must pay the Defendant such costs as he upon his Oath shall make appear he was put to in the attending of the Commission, and the Plaintiff must renew the Commission at his own charge, and the Defendant shall have the carriage of it. And so on the other side shall the Plaintiff have, if the Defendant have the carriage of the Commission, and it be lost by the Default of his side.

But where it becomes void by any Error of the Clerk in making it, the costs shall be born by him, and that side for whom it was taken out.

Where the Defendant hath the carriage of the Commission, he must give notice to the Plaintiff, as before directed; and if such notice be not given, either all the Examinations will be quashed, or otherwise the Court will grant to the other side a Commission *ex parte*.

Where there hath been publication, there no Com-

Commiſſion can be granted or renewed, for examining witneſſes without ſpecial order.

Where a Commiſſion hath been to examine witneſſes without reference and certificate upon it, it cannot be diſcharged upon a bare Petition.

Where a Commiſſion is taken out by conſent, and the one ſide at the ſpeeding of the Commiſſion do put in no Interrogatories, nor examine any Witneſſes (unleſs upon a Motion, and by Order of the Court) he ſhall never after be admitted to have a new Commiſſion.

Where the Defendant had Witneſſes to examine, and they being ſerved did not appear, but make default, here a new Commiſſion will be granted to the Defendants. *Caric's* Reports 91, 43. *Tothil* 111. *Collection of the* Chancery *Orders.*

Touching the choice of Commiſſioners and Examiners, and the Exceptions againſt them.

FIrſt they muſt be men indifferent.

The Exceptions uſually taken againſt them, are, that he who is named Commiſſioner is of Kindred, or allied to the party of whom he is named, & ſo may very well be deemed to ſide with that party.

Or that he is Maſter to the party for whom he is named, or that he is Landlord to the party, or that he is of his Counſel, or Attorney for him, or one to whom he is indebted, or one that hath a Suit with the adverſe party.

The Commiſſion being to be ſat upon at the time and place appointed, the Commiſſioners muſt call the Witneſſes before them, where if they appear not, an Attachment iſſues againſt them, unleſs it be in ſuch caſe where the Witneſſes are impotent, and then a Commiſſion ſhall be awarded to examine them where they be, but uſually they will have coſts before they anſwer.

When the witneſſes appear to be examined, the Commiſſioners and Examiners muſt examine themſelves, and not leave ſo weighty a buſineſs to the truſt of their Clerks, or others, to do it.

They are to hold the witneſſes to the points inſiſted on.

They ſhall examine them but to one Interrogatory at a time, and ſee that anſwered firſt, and at one time.

They are to take what comes from them in anſwer to what they are examined, and not upon their ſight of all the Interrogatories, to let them ſet it down themſelves.

After they have been examined, upon better thought they may force them to attend their examination. They ought not either to ask them idle queſtions beſides the matters of the Interrogatories, nor ſet down impertinent Anſwers.

They are to ſet down truly their ſaying in parchment, and that done they are to ſet their hands to every Schedule-examination, and ſend them up into the Court as they are taken, with a Certificate.

Where the Commiſſioners meet with any obſtruction in the work, they muſt certifie that alſo.

After the Commiſſion is duly executed, and that it be returned up, one of them muſt deliver it in the Court, or they muſt ſend it by one that muſt make Oath, that he received it from one of their hands, and that it was not altered to his knowledge.

If any one of the Commiſſioners commit any miſdemeanor about examination, the party grieved, upon Oath of it, may have the Attachment againſt him, and cannot have a Commiſſion to examine it upon the certificate of the other Commiſſioners.

Where

Where there is a disagreement of the Commissioners, or where there is any other special cause that obstructs the Commission, they may have an examination set down on purpose to do it. See *Carie*'s Reports 30, 31, 40, 80, 81. *Tothil* 189.

The Interrogatories to examine witnesses must be succise and apt.

When witnesses are examined in Court upon a Schedule of Interrogatories, you cannot examine the same witnesses upon putting in new Interrogatories.

Witnesses may be examined as well by Examiners in Court (in case they live in or near the Town) as by Commissioners in the Country.

Either party, as well Plaintiff as Defendant, after answer put in, until publication be past, may examine what witnesses they please in Court, before one of the Examiners; but before answer, and after publication no examination will be allowed, but by special Order some special cause being shewed.

Notice must be given both of the names and dwelling place of the person examined, in all cases of Examination.

After the Order of Publication, and that delivered to the Examiner, no witness may be examined in Court, though he were sworn before, *Carie*'s Reports 27, 58, 93. *Tothil* 189, 190, 192.

Touching Deposition of Witnesses.

NO Abstract, or Copy of the Deposition of the Witnesses, is to be delivered till publication be past.

No Deposition of Witnesses may be suppressed upon a bare Petition only, without reference and certificate upon it.

Where there are several causes which are meerly Cross-causes between the same parties, and touch-

ing the same matter, there the Deposition of Witnesses (in the several Causes) may be used at the hearing of both Causes (being heard together) without any Motion.

Where Depositions are regularly taken, they may not be suppressed by Motion; but the Deposition of Witnesses appearing to this Court to be gotten by practice, may by Order of the Court be suppressed. Deposition of Witnesses taken in this Court, may by Order of the Court be made use of in any other Court, *Carie*'s Reports 35, 56. *Collection of* Chancery *Orders*.

He that will examine Witnesses (*in perpetuam rei memoriam*) to preserve a Testimony, he must first exhibit his Bill, and shew his Title to the thing, and that the witnesses to prove it are old, and not like to live long, whereby he is in danger to lose it, and then pray a Commission to some Gentleman of Credit in the Country to examine them, and a *Subpena* to the parties interested, to shew cause (if they can) to the contrary.

If the party interested being duly served within 14 days shew cause, the Plaintiff must desist; if he cannot, he may go on alone, if the other will not joyn with him, as he may if he will, and then 14 days warning is to be given for Execution.

The Court in this case will appoint Commissioners, and give Articles to examine upon, or they may be examined in the Court by an Examiner.

None but aged and impotent persons, may be examined upon this Commission.

Where the Defendant takes Exceptions to the Proceeding in speeding the Commission; as whether it did appear or not, and whether Oath were made before them of notice given to him of the time and place of Execution thereof, in such case as the Commissioners

miſſioners muſt certifie up with the Commiſſion the Exceptions the Defendant ſo took.

This Teſtimony taken upon this Commiſſion, is not to be publiſhed whileſt the witneſſes live; but in ſome caſes, as either by conſent of the parties, or upon Oath made, that either the Plaintiff hath ſome Tryal at Law, wherein he ſhall need it; and that the witneſſes are not able to come to the place, or otherwiſe by Order of Court; and then the Commiſſion is to be opened by a Maſter, and to be conſidered of, and afterwards it may, if the party will, be exemplified, and may by Order of this Court be given in Evidence in any other Court.

Theſe Depoſitions thus taken, ſhall not be made uſe of to be given in Evidences againſt any other, but the Defendant who was warned to defend it, his Heirs or Aſſigns, or ſome other claiming by or under him, by ſome intereſt which accrued unto him, after the Bill preferred; *Tothil* 189, 190, 191, 192.

Where both Plaintiff and Defendant have examined what Witneſſes they pleaſe, and are ready to go to hearing, then either of them muſt firſt give the other a Rule for Publication; if it be the Plaintiff that gives the Rule, then thus, (Day is given to the Defendant of Publication upon the Commiſſion joyned) and if the Defendant give the Rule then on the contrary thus, (day is given to the Plaintiff for Publication upon the Commiſſion joyned.)

The day ſo given is one week, which being expired, and no cauſe ſhewn to the contrary, then Publication is granted.

After Publication ſo granted, neither party can examine witneſſes, except it be by ſpecial Order of the Court; which is not granted without an Oath made, that the party which requireth the ſame, nor any of them hath ſeen, or been made privy to

any Examinations of any the Witneſſes formerly examined in this Court by either of the parties, and ſome good cauſe be ſhewn, either by Oath or Certificate of Commiſſioners, why the party could not get his ſaid Witneſſes examined within the time limited for their Examination: In which caſe ſometimes the Court gives Order to examine witneſſes by a time prefixed, with this *proviſo*, that the party ſhall not in the mean time ſee the ſaid former Examination.

Touching ſetting down the Cauſe for Hearing.

AFter Publication had, the Plaintiff, or in his neglect the Defendant may procure a day of Hearing of courſe to be ſet down by his Clerk at the end of the Term, when the Lord Chancellor do, *&c.* ſet down days for hearing the next Term.

The days muſt be ſet down according to their priority of publication.

No cauſe muſt be preſented for hearing, the ſame Term that Publication doth paſs.

All Proceſſes to hear Judgments muſt be returnable 6 or 7 days before the day of hearing, except it be in the beginning of the Term, when the time will not bear it; and the Writ muſt have on the back of it the very day of hearing.

If the Plaintiff appear not, the Defendant is to be diſmiſſed with coſts, *Carie's* Reports 45. *Collection of Orders* in Chancery.

Touching Decrees take theſe enſuing Rules.

EVery Decree muſt be drawn up as ſhort as with conveniency it may, and not recite the Pleadings largely, but the ſum of it briefly.

If the Decree be made before the Maſter of the Rolls or before any Judges, it being drawn, muſt be

firſt ſigned by them, and after by the Lord Chancellor, and then it muſt be inrolled.

The Decree muſt be ſigned and inrolled before the firſt day of the next *Michaelmas* or *Eaſter* Term, after the making of it.

Where the Decree concerns Lands or Leaſes, it muſt be entred into the Regiſter's Docquet-Book, within ſix months after the making of it; otherwiſe it ſhall not prejudice the Purchaſors of the Land.

No Decree ſhall be binding to any, but thoſe who are ſerved with Proceſs, *ad audiendum judicium*, or that it did appear *Gratis*.

The Purchaſor that comes in by conveyance, *Bona fide*, from the Defendant before the Bill exhibited, and that is no party by Bill or Order, ſhall not be bound up by any Decree.

But where a man becomes a Purchaſor (*pendente lite*) and without any colour of privity, or allowance by the Court, there it ſhall regularly bind him; yet in ſuch caſe, if there have been any intermiſſion of the Suit, or the Court be acquainted with the conveyance, the Court is to give Order in it.

No Decree made by this Court can be croſſed, altered, or explained upon a bare Petition only; and yet hereby it may for ſome ſpecial reaſons, be ſtaid for a while, till it can be moved in Court.

A Decree of this Court once inrolled, cannot be reverſed or altered, but by a Bill of Review; unleſs it be in caſe of miſcaſting, where the caſe is demonſtrative, and then it may be done by Order.

A Decree will bind the perſons; for where any do refuſe to obey it, this Court will impriſon him until he do conform.

A Decree of this Court doth bind the Right and Title to Lands and Goods; for this Court, by their Order of Sequeſtration and Injunction, doth diſ-

poſe of the poſſeſſion thereof for ever to him, the Court judgeth to have Right thereunto in conſcience.

Where a Decree is to be made upon a pretence of Equity againſt the Judgment of another Court, this Judgment is firſt read, and then the Decree is not to vacuate the Judgment, but to order the unreaſonable party.

The courſe of the Court in inforcing Obedience to their Decrees, and puniſhing the breach of them.

FIrſt, They are to ſerve the party with the Decree it ſelf, under the Seal of the Court, and if he yields not obedience unto, but ſtands obſtinate, they then proceed to take out of the Court all the Proceſſes of Contempt againſt him, one after another; and the party being taken, is to be ſtraitly impriſoned, and not to be ſet at liberty till he yield Obedience to it, (that is to ſay) That he perform that part of the Decree, which is preſently to be done, and give ſecurity to perform that part which is to be done for the future.

Alſo, the Lord Chancellor for his contempt may fine him what he pleaſes, and afterwards eſtreat the ſame.

Where the Decree is for Land, and the party remain obſtinate and willful after his Impriſonment, the Court doth uſe to grant an Injunction for the poſſeſſion; and this being diſobeyed after it is ſerved, and Oath made thereof, the Court doth in that caſe grant a Commiſſion to ſome Juſtices, and if need be, a Writ of Aſſiſtance to the Sheriff, to put him in poſſeſſion. See *Carie's* Reports 23, 34, 36, 37. *Tothil* 56, 57. *Collection of Orders in* Chancery.

Where this Injunction is granted for poſſeſſion of the Land, and the party ſits out all the Proceſs of con-

contempt, and cannot be found by the Sergeant at Arms, or make a Rescue, a Sequestration shall be granted of the Land, *Tothil* 107.

This Sequestration is granted sometimes as well of the Goods, as of the Profits of a Man's Land, and that for his wilfulness in standing out in contempt, and disobedience to the Court; as well where it is for discharge and payment of the Debts and Duties, as where the Decree is for the payment of a Sum of Money, *&c. Tothil* 175, 176.

Concerning Contempts.

IN case of Contempts upon force, or ill words used upon serving of Process, or other words of scandal to the Court, if they be proved by *Affidavit*, the party forthwith upon Motion will be committed, if the words spoken deserve it.

For other contempts against the Orders and Decrees of the Court, take as follows.

First, An Attachment goes forth upon *Affidavit* made of the Contempt.

Then the party being taken is to appear at the Register's Office *de die in diem* to be examined upon Interrogatories, which is usually upon motion referred to one of the Masters in the Chancery, but frequently done by one of the Examiners in Court.

The Contemptor coming in *Gratis*, or upon Process, should give notice to the Clerk of the other side of his Appearance; & if then there be not Interrogatories put in within eight days, or being examined, if no Reference be of the Examination, or Commission taken out by the other side, nor Witnesses examined to prove the Contempt in a month; the Contemptor shall be discharged, and shall recover costs, to be taxed by a Master without any motion.

If

If after he hath appeared upon the contempt, he depart, not examined, he must stand committed till he be examined and cleared; and if it be found, he must clear it, and pay costs ere he be discharged.

Such as stand committed for contempts upon Attachments, or Commissions of Rebellion, must enter into Bond to attend from day to day, not to depart without leave of the Court, *Carie*'s Reports 9, 44, 70, 71, 82. *Collection of* Chancery *Orders*.

Imprisonment upon contempt for Matters past, may be discharged of Grace, after sufficient Imprisonment, or it may be otherwise dispensed withal in such ease.

But where the Imprisonment is for non-performance of any Order of the Court in force, then the person so in contempt ought not to be discharged, except he first obey, only the Court may dispense with the contempt for a time.

Concerning Bills of Review.

A Bill of Review shall not be admitted, except the Decree be first obeyed and performed.

No Bill of Review shall be put in, except the party that prefers it enter into a Recognizance with Sureties, for the satisfying of costs and damages for the delay, if it be found against him.

Where a cause is dismissed upon full hearing, and the dismission signed and inrolled, it cannot be retained again but by a Bill of Review, and that in some special cases.

No Bill of Review is grantable but upon Error in Law, appearing in the body of the Decree it self, without Averment or further Examination of any matter of Fact, which might have been had at the time of the Decree, unless he shew some new matter, which hath risen in time after the Decree, whereof the Plaintiff could not have advantage before: And

then

then upon Oath made, that there is a discovery of such new matter, this Bill, (by leave of the Court) may be exhibited.

But he that so obtaineth this Bill, must first give security by Recognizance to a Master, as is before directed.

Where the Decree is to yield the possession of Land, deliver Writings, or to pay Money, he must first perform that before a Bill of Review; But if the Decree be to extinguish a Right, convey Land, release a Debt, acknowledge Satisfaction, or to cancel Records or Evidences, or the like, it may be staid by the Order of the Court till the Bill of Review be determined.

No Witnesses which either were, or before have been examined upon the former Bill, shall upon the Bill of Review be examined to any matters, *Collection of Orders* in Chancery, *Tothil* 273.

Having now gone through the general Proceedings of Chancery, *upon Bill and Answer, there are some things, which (in some cases) are essential to those Proceeds, which take as follow: And first,*

Concerning Injunctions.

THis is looked upon, according to the general acceptation, as that which makes stay of Proceedings at Common-Law; although in many cases it is likewise to the end to gain the possession of land, in some cases it precedes, and in some cases it is subsequent to the Decree, and sometimes by writing, and other times by word of mouth, as when the party who is to be inhibited, is present in Court.

Where it stays proceedings at Law, in some cases it gives leave to go to Tryall and Judgment, but stays Execution.

Where the matter of Law is tryed, it bars them from Judgment as the case may be.

Or

Or where there is a Judgment, and that executed, it will stay the Money in the Sheriff's hands, after the party is arrested at Law for the Money.

This Injunction is commonly procured, either upon some Writing or matter of Record plainly appearing; or upon a very old debt that hath slept long, Creditor and Debtor being both dead; or in such cases where the Defendant doth not appear, but sits an Attachment; or if he appear, either answers not the Bill, or confesses so much thereof as is sufficient.

Where either the Defendant is beyond the Seas, or being in the Kingdom, doth absent himself, so that he cannot be served; or where upon any pretence he hath gotten time to answer, the Court doth usually in those cases grant an Injunction to stay Suit till the Defendant doth appear.

Where there is a Commission granted to take an Answer in the Country, an Injunction will be granted to stay the Defendant's Suit at Law, (if any be) till the Answer come in; and of this the Defendant must take notice without any serving of it.

Where there is a Verdict at Common-Law in an Action of Debt, and a Bill be afterwards exhibited for Relief, here the Money must be deposited in Court, before the Court will grant an Injunction, unless in some cases where some special matter in Equity appears by the Defendant's Answer, or in some former Decree.

Where a person priviledged in this Court is sued elsewhere, he may stay that Suit by this Injunction.

Where Timber is unjustly felled, ancient Meadow-ground plowed up in twenty years before, or for the maintenance of Inclosures kept in for 20 years before, there it is grantable according to the case.

Where

Where an Injunction is granted to quit a poſſeſſion, it is granted of houſes and land only, and not of rent or ſuch like thing; and it is not to be granted before the hearing of the cauſe, unleſs upon Oath, that the Plaintiff was in poſſeſſion at the time of the Bill put in, and then only of that poſſeſſion he had then, and three years before, and at the time of the motion, and not to be extended to the poſſeſſion of thoſe from whom he claims: And this ſhall not hinder the Defendant's Suit in Law, making of a Leaſe, taking of a Diſtreſs, *&c.* And this Injunction where the Plaintiff delays his Suit to be diſſolved again.

Where it is to ſtay or remove a Suit by *Certiorari*, Bond muſt firſt be given, that the Bill hath matter ſufficient in it to bear it, and ſhall be proved true within 14 days after he hath the Writ; and this if he do not in this time, after a certificate of his neglect from the Examiners, it ſhall be diſmiſſed with coſts, and a *Procedendo* granted.

Where the Injunction is to be obtained by motion for matter in Anſwer, there the Council muſt put the caſe in writing to the Court.

Where it is granted upon the merit of the cauſe, or upon ſpecial cauſe in Equity, it is to ſtand till the hearing, unleſs the Plaintiff delay his Suit.

This Injunction muſt be ſerved either on the party himſelf, his Councellor, Attorney or Solicitor, *&c.* as the caſe requires, and the manner of the ſerving it, is much like the ſerving of a *Subpœna*.

A bare Petition only will not diſſolve this Injunction, nor if it had by Motion, it is to be diſſolved without Motion of the adverſe party.

Where an Injunction is granted till the Anſwer be put in, and no Order be made to continue it, within fourteen days after the Anſwer is come in; in this caſe it ſhall be diſſolved upon the Regiſter's certi-

certificate thereof only; and if no Motion be made that Term, or at the next general Seal after the Term, to continue it for insufficiency of, or matter confessed in the Answer, it is dissolved of course; so where it is to stay a Suit at Common Law, and the Plaintiff doth not proceed for 3 years together.

Where the Injunction is disobeyed (if you would force obedience thereunto) upon Oath made thereof, all the Processes of contempt are to go out against him one after another, and being taken, he is to be imprisoned, till he do yield obedience to it, or give Security to do it; nor is he to be heard in the principal case, till he yield obedience to every thing in the Injunction, *Tothil* 107. *Carie*'s Reports 112, 113.

Touching Dismissions, take these things following.

THis is prayed by Motion, and had upon Plea to the Bills or hearing of the cause, and not after examination of Witnesses before hearing, but upon a discontinuance of prosecution, by Motion and Order of the Court.

Where the Plaintiff discontinues his prosecution after all the Defendants have answered, above the space of three Terms, the cause is to be dismissed of course, after Rules given to that purpose; but after a Replication put in, it cannot be dismissed without an Order upon Motion.

Where a cause is dismissed, upon a full hearing recorded, and certified by the Lord Chancellor, it cannot be again retained, or a new Bill admitted, but where there is new matter.

Where the Bill is newly dismist of course, or by Order, no Motion will be heard to retain it, till the costs assessed upon the dismission be paid, and certified from the Attorney on the other side that it is done.

No

No Diſmiſſion nor Reteiner upon a Diſmiſſion will be granted upon a bare Petition only.

In caſes of Diſmiſſion not upon a full hearing, to a new Bill this may be pleaded.

But for the cauſes of Diſmiſſion, the Court will retain and diſmiſs as it doth ſee cauſe. See *Collection of* Chancery *Orders*, *Carie'* Reports 34, 43, 74, 76, 110.

Touching References and Reports, take as followeth.

WHere there is a Demurrer to the Juriſdiction of the Court, there no Reference may be had to a Maſter upon it, but it muſt be heard before the Lord Chancellor himſelf.

After examination of Witneſſes is paſt, there can be no Reference had to a Maſter to end and determine, unleſs it be in caſe of near Kin, Poverty, or conſent of Parties.

A Reference of Eſtate of the Caſe is ſparingly granted, unleſs where there is conſent of the Parties.

The Examination of Court-Rolls is to be by Reference, but there it muſt be to two Maſters at the leaſt.

No Reference ſhall be made of the inſufficiency of an Anſwer, without allegation of ſpecial cauſes. See *Collection of* Chancery *Orders*.

The Reports of the Maſter upon the Reference muſt not exceed the Warrant of Reference, which is the Order of Court, by which it is referred to him.

After the Maſter hath ſeen the Order, he uſually grants out a Warrant, which is ſhewn to the other ſide, whereby he gives notice of the time of his hearing the cauſe, where the other ſide, with their Counſellors, or Solicitors, may as they ſee cauſe, attend.

The

The Report it ſelf is uſually brief, and with ſome Opinion, if the caſe be not very Doubtful; and if ſo, then it muſt ſet forth the ſpecial caſe.

No Order can be had to confirm the Report, till it be firſt filed with the Regiſter under the Maſter's hand, and a day given on the other ſide for ſeven days at the leaſt, to ſpeak to it in Court, and yet where it is not to ground a Decree, and it be poſitive, it is to ſtand, and proceſs may be taken out for the performance thereof, unleſs the adverſe party upon notice thereof, do within eight days after (if it be in the Term-time) or if within the general Seals, Motions, or if after within four days of the beginning of the next Term, get it controlled, by putting in exceptions thereto, and filing the ſame with the Regiſter.

Where there is an Appeal to the Court from the Report of a Maſter, the party that doth ſo appeal muſt depoſite 40 *s.* with the Regiſter, and a day will be ſet for the Judgment of the Court, if the Court do adjudge it againſt the Appealor, the other ſhall have the 40 *s* and what more the Court ſhall judge fit, if otherwiſe, the Money ſhall be reſtored. See *Collection of* Chancery *Orders*.

The matters briefly under reference are either inſufficient Anſwers, or matters of Account.

Where the Maſters upon a Reference to him reports the Anſwer to be inſufficient, the Complainant may take out two *Subpœnas* againſt the Defendant, the one for 20 *s* coſts, and the other to make a better Anſwer.

Touching Orders, and the Regiſter that draws them.

THe Regiſter being ſworn to ſit in Court, is to take notice of all Orders the Court doth make, and take ſhort notes in their Book, by which to draw up ſome more full Remembrances of that which paſſed in Court.

Where

Where any other shall be made, and the Court not informed of the last material Order formerly made, no benefit shall be taken by such Order, as being surreptitiously procured; and to that end the Register doth mention the last former Order in the present Order.

An Order made out of the general Rule, must set down the special Reasons of it.

No Order shall be explained by Petition, but by publick Motion, both parties being heard.

No Order but final Orders and Decrees, may be received to be entred after 8 days after the pronouncing of it, that day being excluded.

The Register is to keep Copies of the Orders he doth deliver, and his hand is to be put to the Order before it be entred.

The Register after a hearing and reference to a Treaty, is to set down in the Order of Reference, what was the Opinion of the Court, unless the Court doth direct it to be drawn otherwise.

All Orders drawn up by the Register, are to be entred unto the Register's hand in due time.

The Register is within ten days after the end of every Term to certifie the Lord Chancellor, what reference depends in the hands of any Master, and how long they have depended, that so if any of them have depended over-long, the Court may require an account thereof from the Master, and quicken him to a speedy dispatch.

Touching Suits in Forma Pauperis.

THe Council and Attorney assigned for *Paupers* may not refuse, but must attend their business, unless they shew cause to the Court why they cannot so do.

They must always have their Order of Admission with them, and first move that, before any

other Motion; and it hinders not, but that they may, if they have any other Motion, make it afterwards.

Where the Regiſter finds that it is not a *Pauper*, he ſhall not draw up any Order upon the ſecond Motion, but the *Pauper* ſhall loſe the fruit of it.

No Councellor, Attorney, or Officer of the Court appointed to be for a *Pauper* by the Court, is to take any thing of, or contract for any thing with him, and the *Pauper* that can be proved ſo to have given or contracted, is to be diſpaupered for ever.

If a *Pauper* ſell or contract for his Suit, or any part of it, his Bill ſhall be diſmiſſed, and never after retained.

No Proceſs of Contempt ſhall go out for a *Pauper*, until in be ſigned by the ſix Clerk who deals for him, and he muſt ſee there the cauſe for it.

The courſe to obtain the Admiſſion is by way of Petition, either to the Lord Chancellor, or to the Maſter of the Rolls, who underſcribe it, the party having made Oath that he is not worth five pounds, aſſigns him Counſel and Attorney.

His Admiſſion muſt be ſhewn the ſeveral Offices, where he hath occaſion to paſs.

Touching Petitions, for the avoiding the multitude of idle ones, drawn by perſons altogether ignorant of the Practice and courſe of the Court, or true ſtate of the Petitioner's buſineſs; it is directed, that Petitions before they be preſented to the Lord Chancellor, or Maſter of the Rolls, be ſhewed to that ſix Clerk, who is the Petitioner's Attorney in Court, or to his Deputy, and by him approved and ſubſcribed; and for this no Fee is to be taken: but this is not to be underſtood of Petitions adviſed, and ſigned by Councel; nor of Petitions containing any matter of complaint againſt the Attorney, or his Under-Clerk.

Touch-

Touching Affidavits.

Affidavits are moſt generally made befor the Maſters of the Chancery in ordinary, but in caſe of far diſtance from *London*, they may be made before ſome of the Maſters extraordinary in the Country.

An *Affidavit* may not be taken againſt an *Affidavit*, for if it be, the latter is not to be uſed.

An *Affidavit* ought not to be taken, tending to the proof or diſproof of the matter in queſtion: nor may any ſuch matter be admitted, to be colourably inſerted into any Oath made of the ſerving of Proceſs. See more to this purpoſe *Carie*'s Reports 63, 81, 82, 84, 85, 88, 98, 99, 103.

The way of proceeding againſt a priviledged Perſon.

A Declaration againſt a priviledged man for Debt, or any thing whereof the Court holdeth Plea, is to be delivered to one of the ſix Clerks, whom the Plaintiff maketh his Attorney, and he thereupon giveth a day (as it is commonly termed) which is a week, (*viz.* the whole next Return) to the Defendant to anſwer; which day is entred in the ſix Clerks Coſts-book in this manner, (*Roberts* againſt *Johnſon*) a day is given them from the day of St. *Michael* in one month in a Plea of Priviledge.

Day being thus given, the Declaration (under the Attorney's hand) is ſent over to the Petty-Bag, by one of the ſaid Attorney's Clerks there, and likewiſe the day that is given to the Defendant to anſwer in a Roll there, which is called *Rotulum Remembrant. Parvæ Bagæ.* At which day by the courſe of the Common-Law, if the Defendant plead not, he is fore-judged the Court; but the courſe of the Chancery hath been of late to allow the Defendant a day of Imparlance, that is, day till the next Return after the Return given him to anſwer, which is in this manner.

The Defendent retaineth one or other of the Six Clerks, who imparleth for him, which is done in the Six Clerks Costs-book, in this manner (*Roberts* against *Johnson*) Imparlance until the morrow of *All-Souls*, at which day it is sent over to the Petty-Bag, to be entred into the aforesaid Roll next under the said Declaration.

The said day of Imparlance being past, another day, (*viz.* commonly five days in a week which is commonly called a peremptory day) is given by the Plaintiffs Attorney, and entred in a Petty-Bag, as aforesaid, to the Defendent to plead, or else Judgment is to be entred against the Defendent. If the Defendent plead, his Plea is delivered by his Attorney to his Plaintiffs Attorney, and then if the Plaintiff will proceed to a Trial, he is to joyn up the Issue (if he may, for in some cases he cannot) or else the Plaintiff is to reply and to give the Defendent a day, *viz.* a whole Term to joyn upon Issue, which is given and entred as the day to answer: and if the Defendent by that day joyns not up the Issue, Judgment is entred by *Nihil dicit*; and it is to be noted, that after a peremptory day given, the Defendent cannot pray *Oyer* of the Bond and Condition, or such like, as of late is used for a meer delay: But if the Issue be joyned up, either by the Plaintiff or Defendent, then is the Record made up, and the same with a *Venire facias* is sent into the King's Bench to be tried, as an Action there at Issue, and upon Judgment there, Execution is thereupon there awarded.

But if the Defendent refuse or neglect to imparle at the day given him to answer, or to plead, for he may plead at that day if he will, then is Judgment entred against him, and Execution awarded.

Upon Judgment either by default, or *Nihil dicit*, some

ſome of theſe Writs of Execution are awarded; if for Debt, the Plaintiff may have an *Elegit* by *W.* 2. *cap.* 18. or elſe *Levari facias*, or *Scire facias*: and if the Plaintiff cannot levy his Debt and Damages, then he ſhall have a *Capias ad ſatisfaciendum*, either for all, or ſo much as reſteth unſatisfied.

The Judg ment being ſatisfied, the Plaintiff by himſelf or his Attorney (if the Defendent do deſire it) doth acknowledge ſatisfaction upon the Judgment in the Petty-Bag Office.

It is to be noted, that whatſoever day is given by any of the Six Clerks; and by them entred into their Book, worketh nothing, if the ſame be not entred into the Petty-bag.

The courſe uſed where the priviledged Perſon ſues.

THe Defendent being arreſted by an Attachment of Priviledge, at the Suit of a privileged man, muſt retain one of the Six Clerks to be his Attorney, & muſt put in Bail to the Plaintiffs Action, according to the courſe of the Court, which is, to appear from day, to day until the Plea be determined, to ſatisfie the Plaintiff all ſuch ſums of Money as the Plaintiff ſhall recover againſt him by reaſon of this Suit: Then the priviledged man putteth in his Declaration, and the proceeding thereupon are the ſame as before, againſt the priviledged man.

By the courſe of the Court, the Defendent is to put in four Subſidy men, or ſufficient Sureties, (be the Action never ſo ſmall) as appears between *Archibald* and *Bural*, 23 *Eliz.* wherein the Defendent is bound in four hundred pounds, the ſum of the Action, and every Surety in a hundred pounds.

If Judgment be given for a priviledged man in this Court, he may (if he will) take out Execution againſt the Defendent as before; but if he will not,

then he may take out a *Scire facias* againſt the Defendant, and his *Manucaptors* upon the Bail; whereupon, if Judgment be had upon the *Scire facias* in the Chancery, Execution is awarded as in the former Actions: But if upon Iſſue joyned, and ſent into the King's-Bench, and upon a Tryal there, Judgment be given, then is Execution there awarded; and upon ſatisfaction of the Debt and Damages, the Bill is to be diſcharged, upon the acknowledgment of ſatisfaction, as before.

If either the Plaintiff or Defendant, upon a Declaration of Priviledge, or *Scire facias*, demur in Chancery, the Demurrer being joyned, a day is ſet down by the Lord Chancellor, for arguing thereof before him; and if upon the Argument it fall out to be *Reſpondeas ouſter*, then the Judgment is entred thereupon; and if it be entred againſt the Defendant, then Execution is awarded; and if againſt the Plaintiff, then it is, that the Plaintiff ſhall take nothing by his Writ, or by the Declaration.

But if it be a *Reſpondeas ultra*, then is the Defendant to pay coſts, and a day given for him peremptorily to plead, or Judgment to be entred, *Practice of* Chancery 93, 94, 95, 96.

How to enter into and ſue out a Recognizance in Chancery.

IF any man would take Security for a Debt, or any other thing by way of Recognizance, which is a very good aſſurance; the way to enter into it, is, firſt draw up your Recognizance, the form whereof for your better Inſtruction is here inſerted.

A Cognizance in *Chancery*.

R. *B. de G. in Parochia de R. in Comitat. S.* Yeoman, *coram Domino Rege in Cancellar. ſua perſonaliter conſtitut. Recogn. ſe debere N. M. civi & S.* London *centum libr. bona & legalis monetæ Angliæ; ſolvend.*

eidem

eidem N. M. aut ſuo certo Attorn. Executor. Adminiſtrator. vel Aſſign. ſuis, in feſto Sancti Joannis Baptiſtæ (or what time is for the payment of the Money agreed upon) *poſt dat: hujus Recognitionis: & niſi ita fecerit, vult & concedit, pro ſe, Hæred. Executor. & Adminiſtrat. ſuis, quod dicta ſumma centum libr. levetur & recuperetur de Maneriis, Meſſuagiis, Terr. Tenementis, Bonis, Catall. & hereditamentis ipſius R. B. Hæred. Executor. vel Adminiſtrator. ſuorum, ubicunque fuer. invent. per preſentes, ad ſolum opus & uſum præfat. N. M. Executor. vel Adminiſtrator. ſuor. Teſte dict. Dom. Rege apud Weſtminſt. 21 die J. Anno Regni Dom. noſtri Caroli Secundi, Dei grat. Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defenſoris, &c. ſextodecimo; Annoque Dom.* 1664.

The Recognizance being thus drawn, the party who is to enter into the ſame, muſt go before one of the Maſters in Chancery, and there acknowledge it, and the Maſter will ſign it; for which you muſt pay two ſhill. then carry your Recognizance to a Clerk in the Inrolment-Office, and there you ſhall have it inrolled; but you need not inrol it unleſs you pleaſe, but within 12 months after the acknowledgment.

If afterwards you would ſue out a Recognizance that is taken here, then follow theſe directions.

Inſtructions how to ſue out a Recognizance taken in Chancery.

YOu are firſt to bring a Copy of Recognizance to one of the Clerks of the Petty-Bag; and thereupon (if you will) he will make you out two Writs of *Scire facias*; one of a Return paſt, and the other of a Return to come. Theſe Writs you muſt deliver to the Sheriff of *Middleſex*, who will return them, as in this caſe the Law enjoyneth him to do.

And when you have your writs returned, you are to carry them again to the Petty-Bag, and retain one of the Clerks there to be your Attorney herein.

And then give the Defendant a day to appear; which if he do not accordingly, a Judgment is to be awarded againſt him for his ſaid default; and if the Defendant do appear by the day to him ſo given, then is the Plaintiff to declare againſt him by his ſaid Attorney, and he the Defendant is to anſwer and plead to the Plaintiff here, as is uſual in the Courts of Common-Law. And when you are at full Iſſue, you are at the furtheſt of your proceeding in Chancery: for then if you proceed to Tryal, you muſt have the whole proceeding in this Office writ in parchment; and it muſt either be ſent by the Officer of the Petty-Bag ſealed up, to be tryed in the King's-Bench or Common-Pleas (which you will) or elſe it may be delivered over unſealed by the Lord Keeper or Lord Chancellor, which is agreeable with the words *ſe propria manu*, &c. for there can be no Tryal by Jury in Chancery.

The way how to ſue out a Statute-Staple forfeited in Chancery.

THe way of Proceeding in this caſe is, to go firſt to the Clerk of the Staple, and ſhew him the date of your Statute, when it was acknowledged; which will appear by the Statute it ſelf.

And then the Clerk of the Staple will make your Certificate thereupon, and ſeal it up; the which carry to the Clerk of the Crown, and get him to make the *Exigent* therein.

And then deliver your Certificate to the Clerk of the Crown, and have then your Obligation made, and your *Extent* to be made and indorſed on the backſide.

This Indorſement of the *Extent*, is called, the Fine of the *Extent*, which muſt be delivered unto the Sheriff,

riff, who will impannel a Jury to enquire, and extend and apprehend as well the Body as the Lands, Goods and Chattels of the party ſo bounden.

And when the Sheriff hath extended them into the King's hands, he will keep them untill you bring him a *Deliberate*, which you may have in the Office of the Petty-Bag.

But before you ſue out the *Deliberate*, be ſure to inform your ſelf, whether there be Eſtate or Goods extended ſufficient to ſatisfie your Statute: for after you have taken your *Deliberate*, you ſhall never have more than what was firſt extended and delivered.

Therefore if you can find any more Lands or Goods extendible, in any other place than you have at firſt extended, you may get them extended likewiſe, until you have ſufficient to ſatisfie your Debt, and when you have ſufficient, then deliver up your Statute unto the Clerk of the Petty-Bag, who will thereupon make your ſaid Writ of *Deliberate*, and not before.

How to ſue forth a ſpecial Supplicavit *out of the* Chancery, *and alſo how to ſuperſede the ſame.*

THe firſt proceeding in this Caſe is, The party that deſires the Writ, muſt go before one of the Maſters of the Chancery, and take his corporal Oath that it is not deſired for any malice, hatred, or envy to the party, but for his own quietneſs and ſafety; whereupon you ſhall have a Warrant to lead the ſaid *Supplicavit*; and conſequently thereupon the Writ it ſelf, as ſoon as it can be written and ſealed; which one of the Clerks in the Six Clerk's Office will do for you. Dalton's Juſtice f. 206.

After you have the ſame granted, you may ſue out of the Chancery a Writ of *Certiorari*, which you

you ſhould uſe after this manner (*viz.*) when you have delivered your *Supplicavit* to the Sheriff, to have a Warrant thereupon for the arreſting of the party ſued, and have got him arreſted, you muſt keep your *Certiorari* private, until he have put in Bail as the caſe requires.

For if he know of the *Certiorari*, he will lye in priſon until he have procured a *Superſedeas* unto your *Supplicavit*; which if he do, your *Certiorari* is void and uſeleſs.

But when the party is arreſted, and hath put in Sureties to the Sheriff or Juſtice, who granted the warrant upon the Writ, and the party hath put in Bail, then deliver your *Certiorari* unto them that took the Bail, and thereupon they are required to certifie up the ſame accordingly; and by this means ſhall the party continue bound, until you pleaſe of your own accord to releaſe him.

This hath heretofore been a practice very frequent and uſual, but of late years happens very ſeldom. I remember about eight years ago, a troubleſome malicious Prieſt ſued out one againſt ſome of his Neighbours, but I have not heard of any ſince.

HOw to ſuperſede a Writ of *Supplicavit*, becauſe it cannot be known without ſearch and expence to the party againſt whom the ſaid Writ of *Supplicavit* for the peace or good behaviour is ſued out, in what Court the ſame is ſo ſued, until he be arreſted thereupon, whether it be out of the King's-Bench or the Chancery; wherefore to avoid the trouble of being bound, he may ſue out and have his *Superſedeas* ever in readineſs about him, if he ſuſpect any ſuch practice be intended againſt him: which *Superſedeas* muſt be ſued out in this manner, *viz.* You ſhall rather in the Chancery than on the King's-Bench-ſide enter into Bond with Sureties *Gratis*, with condition that

you ſhall keep the King's peace, or be of the good behaviour, for ſuch time as you ſhall bind your ſelf, and as the occaſion ſhall require. If you ſuſpect your Adverſary will bind you to the Peace only, then a *Superſedeas* for the Peace alone will ſerve; if for the good behaviour, then muſt your *Superſedeas* be for the good behaviour; or if both, for both.

When you have ſo bound your ſelf with Sureties, or Sureties in your abſence have ſo undertaken for you (as your *Manucaptors*) before a Maſter in Chancery, you may have a warrant, and thereupon your *Superſedeas*, as ſoon as it can be made and ſealed. And thus much for *Supplicavit* and *Superſedeas*.

Of the amplitude of this Court, and the Fees of Original Writs in Chancery.

THe Chancery hath the making out of all Writs of Summons to the Parliament.

In the Petty-Bag Office are all Latin Pleadings concerning the queſtion of any Patent, or any thing whatſoever which paſſeth the Great Seal; or whatſoever private Deed between Subjects which is acknowledged in Chancery; and all Statutes and Recognizances taken in this Court, and tranſmitted hither; with all Suits for or againſt any perſon priviledged in Chancery: And for the Curſitors of the Chancery, they make all Original Writs, both of the Chancery, King's-Bench, and Common-Pleas.

Theſe Curſitors were incorporated by Queen *Elizabeth*, by the name of the twenty four Curſitors, amongſt whom the buſineſs of the ſeveral Shires is diſtributed.

If any Suit depend before any Sheriff in his Turn or County-Court, you may remove it with a *Recordare*.

If

If it lye in a Court-Baron, the Curſitor will call it away with an *Accedas ad Curiam.*

If it lye in a Town-corporate, he will remove it with a *Certiorari* returnable in Chancery, which may be made of courſe without any Bill exhibited.

And a *Procedendo* may be made alſo preſently thereupon, before the return of the ſaid *Certiorari*, and that of courſe likewiſe.

And alſo a ſecond *Certiorari*, and a ſecond *Procedendo* thereupon may be made; but the ſecond *Certiorari* ſhould be upon a Bill exhibited, ſhewing good cauſe for the Complainant to be relieved in Equity.

And upon Bond or Recognizance given by the Plaintiff, or ſome other for him, with condition that the Plaintiff ſhall prove the contents of the ſaid Bill, the Court of Chancery doth often grant a ſpecial *Certiorari*, ſigned by the Lord Keeper or Lord Chancellor, or the Maſter of the Rolls for the time being.

And the Condition of this laſt recited Bond gives the Obligor only fourteen days liberty to prove the contents of the Bill; which fourteen days muſt commence from the date of the Return of the ſaid Writ of *Certiorari.*

The FEES of all Original Writs ſealed in the *Chancery.*

A

Accedas ad Curiam,	2 *s.* 7 *d.*
Adminiſtratio paſturæ,	5 *s.* 7 *d.*
Ad quod damnum,	7 *s.* 2 *d.*
Annual. teddit.	1 *s.* 6 *d.*
Aſſiſ. cujuſque general.	5 *s.* 6 *d.*
Attinct.	7 *s.* 6 *d.*
Audita querela,	7 *s.* 2 *d.*

Cer-

C

Certiorari,	1 s. 6 d.
Cessavit,	2 s. 6 d.
Conspiracie,	5 s. 6 d.
Contentione,	2 s. 6 d.
Coronator. eligend.	7 s. 2 d.
Cui in vita,	2 s. 6 d.
Cur. claudend.	2 s. 6 d.
Comperuit,	2 s. 6 d.
Sum. bre. de Covenant.	2 s. 6 d.

D

Diem clausit extremum,	2 s. 6 d
Dedimus potestatem super bre. de con. dot.	2 s. 6 d.
Special Dedimus potestatem	7 s. 2. d.
Original. de delib. & detinue,	1 s.

E

Ejectione firma,	2 s. 6 d.
Ejectione custod.	2 s. 6 d.
Excommunicat capiend.	7 s. 2 d.
Execut. inde,	2 s. 6 d.
Expene. nullat.	7 s. 2 d.
Error in London	7 s. 2 d.
Patent. inde,	7 s. 2 d.
Elegit,	10 s.

F

Also judicio	2 s. 6 d.
For. Fac. Maritag.	2 s. 6 d.
Forma donationis,	2 s. 6 d.

H

Hæred. capt.	2 s. 6 d.
Con. Repleg.	5 s. 6 d.

L

Leproso amovendo,	5 s. 6 d.
Libertat proband.	5 s. 6 d.
Libertat. allocand.	7 s. 2 d.

Mode-

M

Moderat.	2 s. 6 d.
Maintenand.	2 s. 6 d.
Minus,	2 s 6 d.
Monstraverunt,	5 s 6 d.
Mittimus,	2 s. 6 d.
Mandamus,	7 s. 2 d.

N

Nocum',	2 s. 6 d.
Non molestand.	2 s. 6 d.
Non omittas,	5 s. 6 d.
Non ponend. in Assis.	7 s. 2 d.

O

Officiar. non faciend.	5 s. 6 d.
Ordinar. non serviend.	2 s. 6 d.

P

Parc. fract.	2 s. 6 d.
Partic. faciend.	2 s. 6 d.
Patent. breve de errore corrigend. in Assiz. attinct.	7 s. 2 d.
Pleg. acquietand.	2 s. 6 d.
Pone,	2 s. 6 d.
Perambulat. faciend.	5 s. 6 d.
Palibus reparand.	2 s. 6 d.
Post disseisin,	2 s. 6 d.
Præcipe in cur.	2 s. 6 d.
Procedendo,	2 s. 6 d.
Prohibition,	2 s. 6 d.
Propriet. proband.	7 s. 6. d.

R

Recte clauf.	2 s. 2 d.
Recte Patent.	2 s. 6 d.
Rediffeizin,	7 s. 2 d.
Reparatio pontium utarum Domini,	2 s. 6 d.
Repleg. Original.	1 s. 6 d.
Rescous,	2 s. 6 d.

Recor-

Recordare, 2 s. 6 d.

STU

Significavit, 7 s. 2 d.
Breve de estat. 2 s. 6 d.
Subpœna, 2 s. 6 d.
Supersedeas inde, 7 s. 2 d.
Superſed. pro pace, 5 s. 6 d.
Superſed. omn. al. 5 s. 6 d.
Tranſ. 1 s.
Tranſ. ſuper caſum, 2 s. 6 d.
Valore Maritagii, 2 s. 2 d.
Vaſc. 2 s. 6 d.
Villat. removend. 2 s. 6 d.
Vitar. eligend. 2 s. 2 d.

W

Warrantia Chartæ, 2 s. 2 d.
Warrantia diei, 5 s. 6 d.
Withernam, 5 s. 6 d.

A Table of Fees due unto the Six Clerks, and other Officers of the Court.

FOr all firſt, ſecond, or other Copies of all Bills, Anſwers, or other Pleadings whatſoever; as alſo of all Certificates and Examinations made or taken, by vertue of any Commiſſion out of this Court, and of the Interrogatories therewith returned, and alſo of all Declarations or Proceedings by Engliſh Bill, or according to the courſe of the Common-Law, and for Copies of Records, Rolls, or Evidences, brought in to be copied, or remaining in the ſaid Court, for every Leaſe of Paper containing fifteen lines, beſides the King's Duty, 8 d.

For the inrolling of all warrants, whereby any Patents, Commiſſions, Licenſes, Pardons, Leaſes, or other Grants whatſoever, do paſs by and under the Great Seal, after the rate of every skin ſo paſſing the Great Seal, (beſides the King's duty) 2 s. For

For the inrolling of all Warrants for all Commissioners for the peace, for Goal-delivery, for a Liberty of *Oyer* and *Terminer*, for Pyracies, for the preservation of the Game of Swans, and for Commissions for Inquiry, sued out for the benefit of any private person, for every of the said Commissions, 1 s. 8 d.

For the inrolling of all Warrants for all commissions of Appeal, and for the Admiralty for every one of them, 4 d.

For the inrolment of every warrant for every ordinary License, or Pardon of Alienation, 3 s. 4. d.

But if it be of more than ordinary length, then according to the length after the rate of 20 s. the skin, and not above, besides the King's Duty.

For the inrolling of all warrants for all Commissions in nature of Writs, of *Diem clausit extremum*, *Mandamus*, *Ideota probanda*, *Lunaticis inquirend. Melius inquirend.* for every of them, (besides the King's duty) 3 s. 4 d.

For the inrolling of the Warrants, for every Patent or Grant of the custody of any Ward, (besides the King's Duty) 8 s. 8 d.

For the inrolling of the Warrant for every Presentation, Donation, or Revocation to any Rectory, Vicaridge, Deanry, Arch-Deaconry, Chancellorship, Treasurership, or Dignity to any Metropolitical, Cathedral, or Collegiate Church, or for any Canonship, or Prebend in any of the said Churches, or for the Mastership in any Hospital or other Ecclesiastical living, or for the Grant of any Presentation or Presentations, *pro unica vel pluribus vicibus* thereunto, (besides the King's Duty) 3 s. 4 d.

For the Inrolling of Warrants for every *Mandamus ad installand.* (besides the King's Duty. 3 s. 4 d.

For the inrolling of all Warrants, for all Licenses for

for Wines, for every Life, (beſides the duty) 3 *s.* 4 *d.*

Or ſuch Fee not exceeding that proportion, as by the Commiſſioners ſhall be ſet down, formerly they paid although granted for three lives, (beſides the new Impoſition,) 6 *s.* 8 *d.*

For the inrolling Warrants for every Pardon of Outlawry, (beſides the Kings duty,) 3 s. 4 *d.*

For inrolling the Warrants for every Denization, or commiſſion of Bankrupts, beſides the duty, 3 *s.* 4 *d.*

For the writing of every Exemplification, as well of Records in the *Tower*, as of any Records whatſoever, being in their cuſtody, after the rate for every skin, (beſides duty) 1 *l.* 6 *s.* 8 *d.*

Of every Client for every Term whilſt his cauſe dependeth undetermined, by decree or by diſmiſſion, the Termly fee of, 3 *s.* 4 *d.*

If there were twenty Plaintiffs or more in one Bill, they all pay but one Fee for one Term, 3 *s.* 4 *d.*

But for every three Defendents, accounting the Husband and the Wife but for one perſon, there is due for their firſt appearance, 3 *s.* 4 *d.*

And upon the firſt appearance, if every Defendent appear ſeverally by himſelf, he is to pay the Fee of three ſhillings four pence, but every Term afterwards, during the continuance of the cauſe there is only the Fee of three ſhillings four pence the Term, to be paid for all the Defendents that appeared in any Term or Vacation in the ſame cauſe.

For a *Subpœna* to anſwer, (beſides the duty) 2 *s.* 6 *d.*

If there be three in the Writ, you pay more, (beſides the duty) 6 *d.*

For the Attachment, (beſides the duty) 2 *s.* 10 *d.*

For breaking it up with the Sheriff, 2 *s.*

For return of the Attachment, 4 *d.*

For the Proclamation upon the ſame, 2 *s.* 10 *d.*
For the return of the Proclamation, 4 *d.*
For the Commiſſion of Rebellion, 18 *s.* 2 *d.*
For the inrolment of every *Libertate* and *Allocate*, 3 *s.* 4 *d.*

The Rule which the Plaintiff gives the Defendent to make anſwer by a certain day, in caſe where the Defendent appears, 4 *d.*

For each Rule of publication, after examination of Witneſſes, 4 *d.*
For entring them with the Regiſter, for each, 4 *d.*
The Defendents apparance, 4 *s.*

In which is included the Attorney's Fee for the Term.

For the Oath made that the Anſwer is true, 1 *s.*
The like for every Defendent, 1 *s.*
For the Commiſſion to take the Anſwer in the Country by *Dedimus poteſtatem*, 7 *s.* 10 *d.*
Beſides the ingroſſing of the Bill, which is included, every ſheet, 6 *d.*
For the *Subpœna* for coſts, where the Bill is not put in by the Complainant within the time limited, 2 *s.* 6 *d.*
For a Bill of coſts, and the entry of it, 2 *s.* 4 *d.*
A joynt Commiſſion to examine Witneſſes in the Country, 7 *s.* 10 *d.*
So much the Plaintiff pays the Defendent, 6 *s.* 8 *d.*
For the examination of the firſt Witneſs here before Examiners, 2 *s.* 6 *d.*
For the Copies of the Depoſition of any Witneſſes returned by Commiſſion, 8 *d.*
For every ſheet,
For Copies of Depoſitions taken in the Examiners Office, for each ſheet, 1 *s.*
For the drawing of the Order upon Motion, for every ſide, 2 *s.*

For

For the entring of the Order, every ſide, 1 *s.*
The Fees of an Injunction in all, 1 *l.*2 *s.*6 *d.*
For a *Subpœna* to rejoyn, 2 *s.* 6 *d.*
For a *Subpœna* to hear Judgment, 2 *s.*6 *d.*
For a *Subpœna ſuper ordinem* to ſhew cauſe, 7 *s.*2 *d.*
For a *Subpœna ducens tecum*, 2 *s.*2 *d.*
For a *Subpœna de executione ordinis*, 1 *l.*
For the Rolls to publiſh Witneſſes, for each, 4 *d.*
For entring them with the Regiſter, for each, 4 *d.*
For the Copy of Replication, Rejoynder, Sur-rejoynder, Rebutter, and Sur-rebutter, as for Bill and Anſwer.

Fees for a Decree for drawing up, as in caſe of an Order.

For every writ of Execution upon any Order, 6 *s.*8 *d.*
For drawing and inrolling every Decree and Diſmiſſion reſpectively, 3 *s.* 4 *d.*
For every writ of Execution upon any Decree after the rate for every skin, 1 *l.*6 *s.*8 *d.*
For the writing of every Sheriffs Patent, Writ of Aſſiſtance, Writ of Diſcharge, Commiſſion to take the Sheriffs Oaths, the Warrant of Attorney, and the writing of the two Oaths, and the Attorneys Fee, 1 *l.*2 *s.*8 *d.*
For every *Superſedeas* for the diſcharge of any Commiſſion, or other Writ made in the Six Clerks Office, 6 *s.*8 *d.*
For every *Superſedeas* of Priviledge, 6 *s.*8 *d.*
For every ſpecial *Certiorari*, or *Procedendo*, *Corpus cum cauſa*, or *Habeas corpus*, 6 *s.*8 *d.*
For every Bail upon every writ of *Corpus cum cauſa*, or nature of Priviledge, 2 *s.*9 *d.*
For all manner of *Certioraries* and *Procedendo*'s of courſe, 2 *s.*
For every Recognizance or Bond made to the Court, 2 *s.*

ORDERS

Heretofore uſed in

CHANCERY,

With ſuch alterations and additions as the Right Honourable *Edward*, Earl of *Clarendon*, Lord High Chancellor of *England*, with the advice and aſſiſtance of the Honourable Sir *Harbottle Grimſtone*, Baronet, Maſter of the Rolls, have thought fit to ordain.

Bills.

THat no Councellor do put his hand to any Bill, Anſwer, or other Pleading, unleſs it be drawn, or at leaſt peruſed by himſelf in the Paper-draught before it be ingroſſed, (which they ſhall do well for their own diſcharge, to ſign alſo after peruſal) and Councel are to take care that the ſame be not ſtuffed with the repetition of Deeds, Writings, or Records, *in hæc verba:* but the effect and ſubſtance of ſo much of them only as is pertinent and material to be ſet down, and that in brief terms, without long and needleſs traverſes of points not traverſable, tautologies, multiplication of words, or other impertinencies occaſioning needleſs prolixity, to the end the ancient brevity and ſuccinctneſs in Bills and other Pleadings, may be reſtored and obſerved: Much leſs may any Councel inſert therein matter meerly criminal or ſcandalous, under the penalty of good coſts, to be laid on ſuch Councel, to be paid to the party grieved, before ſuch Councel be heard in Court.

If

If there be matters ſcandalous in a Bill, a Maſter of Chancery is to expunge it, and to tax coſts for the party ſcandalized; but if on ſuch reference the Maſter reports the Bill not ſcandalous, the party procuring ſuch reference ſhall pay coſts to the Plaintiff for ſuch his reference.

That all Bills be dated the ſame they are brought into the Six Clerks Office, and that no Six Clerk preſume to antedate any Bill, and that no Under-Clerk preſume to keep any Bill by him, but with the firſt opportunity deliver the ſame to the Six Clerk, or his allowed Deputy, in his abſence to be accordingly filed.

No Bill, Anſwer, or other pleading ſhall be ſaid to be of Record, or to be of any effect in Court, until the ſame be filed with ſuch of the Six Clerks with whom it ought properly to remain.

Subpœna's.

THat all Plaintiffs may have liberty to take forth *Subpœna's ad reſpondendum*, before the filing of their Bills, if they pleaſe, notwithſtanding any late Order or Uſage to the conrrary.

That every *Subpœna* to anſwer, revive, review, rejoyn, to teſtifie or to hear Judgment, ſhall be ſerved perſonally, or left at the Defendents dwelling-houſe or place of reſidence, with one of the Family. And no Clerk of this Court ſhall iſſue any Attachment for not appearing, but upon *Affidavit* firſt made, poſitive and certain of the day and place of ſuch ſervice of the *Subpœna*, and the time of the Return thereof, whereby it ſhall appear that ſuch ſervice was made, if in *London*, or within twenty miles thereof, four days at the leaſt, excluding the day of ſuch ſervice: and if above twenty miles, then to have been eight days before ſuch Attachment entred: and that ſuch Attachment ſhall not be diſ-

charged, but upon payment of usual costs, and so the succeeding costs to be double.

'Note, that a *Subpœna* for to hear Judgment is to 'be served personally, or left at the house of the par- 'ty with one of the Family, save that you are to give '14 days notice exclusive before the time to hear 'Judgment, but if it be in the short Vacation between '*Easter* and *Trin.* Term, you are to give but 10 days 'notice, because of the shortness of the Vacation.

'Now there is also a *Subpœna* for costs, not menti- 'oned amongst the *Subpœna*'s in the general Rule, 'which is also to be personally served because of de- 'manding of the costs thereby required, and you can- 'not serve it otherwise unless you have the Order of 'the Court on an *Affidavit* that you can't find the 'person to serve him personally to leave it with the 'Clerk in Court, or otherwise, as the Court on a 'Motion or Petition shall direct, and that deemed 'good if personally served.

'Now because there is so frequent mistakes made 'to the great prejudice of the Plaintiff, in serving of '*Subpœna*'s, it is not amiss if you understand how to 'serve it rightly; Now if the *Subpœna* be against on- 'ly one that you may leave the body at such persons 'place of abode, or serve him with the label if you 'meet him personally, but if one or two more are in 'the *Subpœna*, two are to be served personally, and 'the body under seal shewed to them at the time of 'such service, and the body may be served personally 'or left at the house as you please, of the other person.

Pleas and Demurrers.

FOrasmuch as the Defendant being served with process to answer, may by advice of Council upon sight of the Bill, only be enabled to demur thereunto, if there be cause, or may by like advice be enabled

abled to put in any juſt Plea which he hath in diſability of the perſon of the Plaintiff, or to the Juriſdiction of the Court: It is therefore ordered, that ſuch Demurrer or ſuch Plea in diſability, or to the Juriſdiction of the Court, under the hand of Council learned, ſhall be received and filed, although the Defendant do not deliver the ſame in perſon, or by Commiſſion. And therefore if the Defendant ſhall pray a Commiſſion, and thereby return a Demurrer only, or only ſuch a Plea which ſhall be afterwards overruled, the Defendant ſhall pay five marks coſts: and although it be allowed, the Defendant ſhall have no coſts in reſpect of the Plaintiff's needleſs trouble occaſioned by ſuch commiſſion.

Every Demurrer ſhall expreſs the ſeveral cauſes of Demurrer, and ſhall be determined in open Court. And ſuch Pleas alſo as are grounded upon the ſubſtance and body of the matter, or extend to the Juriſdiction of the Court, ſhall be determined in open Court; and for that purpoſe, the Defendant is to enter the ſame with the Regiſter within eight days after the filing thereof; or in default of ſuch entry made, the ſame ſhall be diſallowed of courſe, as put in for delay. And the Plaintiff may then take out proceſs to enforce the Defendant to make a better anſwer, and pay 40 ſhillings coſts; and the the ſame ſhall not afterwards be admitted to be ſet down or debated, unleſs upon motion it ſhall be ordered by the Court: And if any cauſe of Demurrer ſhall ariſe and be inſiſted on at the debate of the Demurrer (more than is particularly alledged) yet the Defendant ſhall pay the ordinary coſts of over-ruling a Demurrer (which is hereby ordered to be five marks coſts) if thoſe cauſes which are particularly alledged be diſallowed: Although the Bill, in reſpect of that particular ſo newly alledged, ſhall be diſmiſſed by the Court.

A Plea of Outlawry, if it be in any Suit for that duty, touching which relief is ſought by the Bill, is inſufficient according to the Rule of Law, and ſhall be diſallowed of courſe, as put in for delay: And the Plaintiff may notwithſtanding ſuch Plea, take out Proceſs to enforce the Defendent to make a better anſwer, and pay five marks coſts; otherwiſe a Plea of Outlawry is always a good Plea, ſo long as the Outlawry remaineth in force: and therefore the Defendent ſhall not be put to ſet it down with the Regiſter. And after the ſaid Outlawry reverſed, the Defendent upon a new *Subpœna* ſerved on him, and payment unto him of 20 ſhillings coſts, ſhall anſwer the ſame Bill, as if ſuch Outlawry had not been: But if the Plaintiff conceive ſuch Plea of Outlawry thorough miſpleading, or otherwiſe to be inſufficient, he may, upon notice given to the Clerk on the other ſide, ſet it down with the Regiſter, to be debated with the reſt of the Pleas and Demurrers in courſe: But if the the Plaintiff ſhall not in ſuch caſe enter it with the Regiſter within eight days after the ſame ſhall be filed, the Defendent may take out Proceſs againſt the Plaintiff for his ordinary coſts of five marks, as if the ſame had been heard.

The dependency of a former Suit for the ſame matter, is alſo a good Plea, and therefore the Defendent ſhall not be put to ſet it down with the Regiſter: But if the Plaintiff be not ſatisfied therewith, the ſame ſhall be referred to one of the Maſters of the Court to certifie the truth thereof, and if it ſhall be determined againſt the Plaintiff, he ſhall pay five pounds coſts to the Def. But ſuch reference ſhall be procured by the Plaintiff, and a Report thereupon within one month after the filing of ſuch Plea, otherwiſe the Bill to ſtand diſmiſt of courſe, with the ordinary coſts of ſeven Nobles.

If

If after a Suit commenced at the Common Law, or any other inferiour Court, a Bill ſhall be exhibited in this Court to be relieved for the ſame matter, the dependancy of the former Suit ſhall be admitted as a good Plea, and the Defendent not be put to motions for an Election or Diſmiſſion, and that Plea ſhall be proceeded in, as in caſe of a Plea of a former Suit depending in this Court for the ſame matter.

After a Contempt duly proſecuted to an Attachment with Proclamation returned, no Commiſſion to anſwer ſhall be made, nor no Plea or Demurrer admitted, but upon motion in Court, and *Affidavit* made of the parties inability to travel, or other good matter, to ſatisfie the Court touching that delay.

Anſwers.

After a Commiſſion once obtained to anſwer, no ſecond Commiſſion ſhall be granted without ſpecial Order of Court, upon good reaſon ſhewed to induce the ſame, or the Plaintiffs own aſſent.

An Anſwer to a matter charged as a Defendents own fact, muſt regularly be without ſaying, *To his remembrance*, or *As he believeth*, if it be laid to be done within ſeven years before, unleſs the Court upon Exception taken ſhall find ſpecial cauſe to diſpenſe with ſo poſitive an Anſwer: And if the Defendent deny the fact, he muſt traverſe or deny it (as the cauſe requires) directly, and not by way of negative pregnant. As if he be charged with a Receipt of a ſum of Money, he muſt deny or traverſe that he hath not received that ſum, or any part thereof, or elſe ſet forth what part he hath received. And if a fact be laid to be done with divers circumſtances, the Defendent muſt not deny or traverſe it literally, as it is laid in the Bill, but muſt anſwer the point of ſubſtance poſitively and certainly.

When

When the Defendants have anſwered, the Plaintiffs and their Council are ſeriouſly to adviſe of the Anſwers, and if they find that upon the Anſwer alone, without further proof, there be ſufficient ground for a final Order or Decree, to proceed upon Anſwer, without further lengthning of the cauſe. Or if it be needful to prove one or a few particular points to reply unto thoſe points, and not to draw into Pleadings or Proofs any more than thoſe neceſſary points, thereby making long books, and putting both ſides to unneceſſary charges, the Defaulters herein to be puniſhed by paying the charge of the Copies, or otherwiſe, as cauſe ſhall require.

If a Hearing be prayed upon Bill and Anſwer, the Anſwer muſt be admitted to be true in all points, and no other Evidence to be admitted, unleſs it be matter of Record, to which the Anſwer refers, and is proveable by the Record: The Plaintiff is therefore to be well adviſed, that the Court be not put to an unneceſſary trouble, and himſelf to a certain charge, in bringing his cauſe to hearing, which will not bear a Decree.

Exceptions.

WHen a Plaintiff excepteth to a Defendant's Anſwer, he ſhall ſet down his Exceptions in writing; and if the Anſwer be filed in Term-time, he ſhall the ſame Term, or within eight days after that Term, deliver the ſame Exceptions to the Counſel, whoſe hand is to the Anſwer, or to the Defendant's Clerk in Court: And if the Defendant do within eight days after ſuch delivery, ſatisfie the Plaintiff of the invalidity of thoſe Exceptions, or amend the Anſwer in the ſame time, or agree with the Plaintiff, or his Clerk, or Solicitor, to amend it accordingly, and pay 20 ſhillings coſts, the Plaintiff ſhall go on to reply: but if the Defendant ſhall fail

to

to do the ſame, or put in a ſecond inſufficient Anſwer, the Plaintiff may get the Anſwer or Anſwers referred: and if the ſame ſhall be ruled inſufficient, the Defendant ſhall pay 40 ſhillings coſts. But if an Anſwer be filed in Vacation-time, then the Plaintiff ſhall have eight days in the beginning of the next Term, if he ſee cauſe to put in his Exceptions, and deliver them in writing in like manner, as before is appointed: and the Defendant within eight days after ſuch delivery to proceed as before is ordered.

If the Plaintiff ſhall procure a Reference of an inſufficient Anſwer within the time before limited, and the ſame be reported good, the Plaintiff ſhall pay the Defendant 40 ſhillings coſts.

If the firſt Anſwer be certified inſufficient, and ruled ſo, the Defendant ſhall pay 40 *s.* coſts, as aforeſaid, if the Anſwer was put in in perſon; But if the ſame came in by Commiſſion, the Defendant ſhall have 50 *s.* coſts, and no new Commiſſion ſhall be awarded for taking a ſecond Anſwer, unleſs it be by Order, upon *Affidavit* made of the party's inability to travel, or other good matter, to ſatisfie the Court touching that delay, and firſt paying the coſts of ſuch inſufficient Anſwer, or by the Plaintiff, or his Clerks aſſent for expediting the cauſe. If the ſecond Anſwer be reported inſufficient unto any the points formerly certified, the Defendant ſhall pay three pounds coſts; And upon the third inſufficient, four pounds coſts: And upon a fourth Anſwer certified inſufficient, he ſhall pay five pounds coſts, and be examined upon Interrogatories to the points reported inſufficient, and ſhall be committed, until he hath perfectly anſwered thoſe Interrogatories, and paid the coſts, in reſpect of the great vexation and delay, which in ſuch caſes will happen to the Plaintiff.

No

No *Subpœna ad rejungendum* ſhall be of force, unleſs there be a Replication filed in the cauſe, according to the courſe of the Court, before the iſſuing out of the ſaid *Subpœna*, or at leaſt before the return thereof: And the parties upon whom ſuch *Subpœna* ſhall be reſerved, finding no Replication filed before the return thereof ſhall have the ordinary coſts taxed, according to the courſe of the Court.

Examination of Witneſſes.

WHen the parties are at Iſſue, and proceed to examine Witneſſes, the Interrogatories are to be penned with care, that the ſame be pertinent, and only to the points neceſſary, and the Witneſſes are to be ſorted and examined on thoſe Interrogatories only that their Teſtimony doth extend unto, without the needleſs Interrogatories of matters unneceſſary or immaterial, as well to avoid the charge of both parties, Plaintiff and Defendent, in ſuperfluous Examinations, as the apt Interrogatories (which are the life of the cauſe) may be exhibited.

No Witneſs ſhall be examined in Court by the Examiner, without the privity of the adverſe party, or of his Clerk who deals for the adverſe party, to whom the perſon to be examined ſhall be ſhewed, and a Note of his name and place of dwelling delivered in writing, by ſuch as ſhall produce him; and the Examiner is to take care, and be well ſatisfied that ſuch notice be given, and then ſhall add to the Title of the Witneſſes examination the time of ſuch notice given, and the name of that perſon to whom it is given, and by whom, that at the hearing of the cauſe the Suiter be not delayed, upon pretence of want of notice.

When Witneſſes are examined in Court upon a Schedule of Interrogatories, there ſhall be no new Interrogatories put in to examine the ſame Wit-

Witneſſes; nor ſhall any Witneſſes be examined in Court after the day of publication; though they were ſworn before, ſo as a Copy of the Rule or Order whereby publication paſſed, be delivered to the Examiner, that he may take notice thereof.

That all Copies of Bills, Anſwers, Depoſitions, or other Record, or thing whatſoever belonging to the Six Clerk to copy, ſhall contain fifteen lines at the leaſt in every ſheet of paper, written fairly, and orderly, and unwaſtefully: And that no ſuch Copy ſhall be henceforth delivered out of the Office, before it be ſigned by ſuch Six Clerk to whom it belongeth, with his own proper hand-writing, or by his Deputy in his abſence.

Nor any Copy not ſo ſigned, ſhall be made uſe of in Court, or before any Maſter, which all Clients are to take notice of, to the end they may be prepared with ſuch Copies at the hearing of their Cauſes.

And whereas many inconveniencies do frequently ariſe by undue copying Bills, Anſwers, and other Pleadings, before they be filed; ſo as they are neither filed, or very irregularly, to the prejudice of the Client, and trouble to the Court, by unneceſſary Motions: It is therefore ordered, That no Under-Clerk, or his Man, or other from him, do from henceforth preſume to copy any Bill, or other Pleading whatſoever, before it be duly filed with the proper Six Clerk, who ought to file the ſame.

For preventing of Perjury, and other miſchiefs often appearing to the Court, the Examiner is to examine the Deponent to the Interrogatories directed *ſeriatim*, and not to permit him to read over, or hear read any other Interrogatories, until that in hand be fully finiſhed; much leſs is he to ſuffer the Deponent to have the Interrogatories, and pen his own Depoſitions, or depart after he hath heard an Inter-

Interrogatory read over, until he hath perfected his Examination thereunto.

And if any Witneſs ſhall refuſe ſo to conform himſelf, the Examiner is thereof to give notice to the Clerk of the other ſide, and to proceed no further in his Examination, without the conſent of the ſaid Clerk, or Order made in Court to warrant his ſo doing.

The Examiner ſhall not examine any Witneſſes, to invalid the Credit of any other Witneſs, but by ſpecial Order of the Court, which is ſparingly to be granted, and upon exceptions filed with the Examiner without Fee, and notice thereof given to the adverſe party or his Clerk, together with a true Copy of the ſaid exceptions at the charge of the party ſo examining.

The Examiners (in whom the Court repoſeth much confidence) are themſelves in perſon to be diligent in examination of Witneſſes, and not intruſt the ſame to mean and inferiour Clerks; and are to take care to hold the Witneſs to the point interrogated, and not to run into extravagancies, and matters not pertinent to the Queſtion, thereby waſting paper for their own profit, of which the Court will expect a ſtrict account.

The Examiners are to take care that they employ under them in their Office, none but perſons of known integrity and ability, who ſhall take an Oath, Not to deliver or make known, directly or indirectly, to the adverſe party, or any other, ſave the Deponent; who comes to be examined in any of the Interrogatories delivered, to be examined upon any Examination by him taken, or remaining in the Examiners Office an Extract, Copy, or breviat thereof, before publication be thereof paſſed, and the Copies thereof taken. And if any ſuch Deputy, Clerk,

Clerk, or perſon ſo employed, ſhall be found faulty in the premiſſes, he ſhall be expulſed the Office; and the Examiner who ſo employed him, ſhall be alſo anſwerable to the Court for ſuch miſdemeanour, and to the party grieved, for his coſts and damages ſuſtained thereby: And ſuch Solicitor or other perſon, who ſhall be diſcovered to have had a hand therein, ſhall be liable to ſuch cenſure for the offence, as the Court ſhall find juſt to inflict upon him.

In examining of Witneſſes, the Examiner ſhall not uſe any idle Repetitions, or needleſs circumſtances, nor ſet down any anſwer to the Queſtion, to which the Examinant cannot depoſe, other than thus; *To ſuch an Interrogatory this Examinant cannot depoſe.* And in caſe ſuch impertinencies be obſerved by the Court, the Examiner is to recompence the charge thereof to the party grieved, as the Court ſhall award.

That after Witneſſes examined in Court, there ſhall be two Rules only given for Publication, *viz.* An Ordinary Rule, and then a day to ſhew cauſe why Publication ſhould not paſs, and upon the Return of a Commiſſion, one Rule only to be given, within which times aforeſaid, if the other ſide do not ſhew unto the Court good cauſe unto the contrary, Publication ſhall paſs accordingly.

All Pleadings, Commiſſions, Certificates, belonging to the Six Clerks to receive, ſhall immediately, upon the bringing in or return thereof into this Court, be delivered to ſuch Six Clerk's own hands, as ſhall be Attorney in the cauſe, or to the hands of his Deputy in his abſence; and not be from henceforth in any wiſe kept back, nor any Depoſitions or Anſwers taken by Commiſſion, or other Commiſſion to be opened by any of their Under-Clerks, before they be ſo delivered.

No

No Bills, Warrants, Pleadings, Commissions, Decrees, Dismissions, or other Records whatsoever, shall from henceforth be carried to be ingrossed, inrolled, copied, or otherwise used by any of the Under-Clerks to their Chambers, or elsewhere out of the Six Clerks Office, or lodgings there, and so soon as any Clerk shall have ingrossed, inrolled, copied, or used any such Warrant, Pleading, Commission, Decree, or other Record in the said Office, he shall bring the Original thereof presently back to such Six Clerk to whom the custody thereof doth belong, for the more safe keeping and disposing thereof according to the ancient usage.

Commissions.

WHen a Commission is awarded to examine Witnesses, if by default of him that hath the carriage of the Commission, or by his Commissioners nothing is done, he shall bear all the charges that the other side was put unto about that Commission, either for Fees of Court, bringing or entertaining Commissioners or Witnesses, or otherwise, to be ascertained by the Oath of the party, or of him that disbursed the Money for him, and shall renew the Commission at his own charges.

When a Commission is awarded to examine Witnesses, and the one side produceth and examineth all his Witnesses, and the other side doth not, but prays a new Commission; if it be granted he shall bear all the charges of the renewed Commission, both in Court and in the Country, as well for the charge and entertainment of his own Commissioners, as of the Commissioners on the other side, and the other side shall be permitted to cross-examine the Witnesses produced by him that reneweth the Commission; but if he will examine any other Witnesses of his own, then he shall bear his own part.

of

of the charge; the charges herein mentioned to be ascertained by the Oath of the party, or of him that disburſed the Money for him.

He at whoſe inſtance a commiſſion to examine Witneſſes after a former commiſſion executed and returned, is once renewed, and he by whoſe default, or by default of his Commiſſioners, a former commiſſion was not executed, and thereupon it is renewed, ſhall at his peril examine all his Witneſſes by that renewed commiſſion, or examine them in Court by the end of the Term, wherein that renewed commiſſ is returnable without any more or further delay.

That no commiſſion *ad examinandum Teſtes* be executed in *London*, or within ten miles thereof, without ſpecial Order firſt obtained upon *Affidavit* made of the parties inability to travel, or other good matter. And that all Depoſitions taken by commiſſion in *London*, or within ten miles thereof, without ſpecial Order as aforeſaid, ſhall ſtand ſuperſeded and ſuppreſſed *ipſo facto*, and not allowed to be read as Evidence at the hearing of the cauſe. And the parties who ſhall cauſe the ſame to be executed, ſhall ſuffer ſuch puniſhment for their contempt and irregularity, as the Court ſhall think fit.

Depoſitions.

WHere either the party Plaintiff or Defendent, obtaineth an Order to uſe Depoſitions of Witneſſes taken in another cauſe, the adverſe party may likewiſe uſe the ſame without Motion, unleſs he be upon ſpecial reaſon ſhewed to the Court by that party firſt deſiring the ſame, inhibited by the ſame Order ſo to do.

No Motion ſhall be made in Court, or by Petition for ſuppreſſing of Depoſitions as irregularly taken, until the Six Clerks not towards the cauſe have been firſt attended with the complaint of the party

grieved, and certifie the true ſtate of the Fact to the Court, with their opinion: If the Attorneys or Clerks on either ſide, ſhall not for the caſe of their Clients agree before them; for which purpoſe a Rule for attendance of the Six Clerk in ſuch caſe ſhall be entred of courſe with the Regiſter at the deſire of the party complaining, which ſhall warrant their proceedings, and certificate to the Court.

Cauſes to be ſet down for hearing.

THE Six Clerks, who are the only Attornies in this Court, ought to inform themſelves continually of the ſtate and proceedings of their Clients cauſes, and to give account to the Court as the Attorneys in all other Courts do, and not to leave the care and knowledge thereof upon their Under-Clerks, who attend not in Court, and the Clients and ſuch as follow their cauſes, are to acquaint their Attorneys for that purpoſe.

Such as deſire to have their Cauſes ſet down for hearing, muſt repair to the Six Clerk that is Attorney in the cauſe, at leaſt ſix days before the end of the Terms that the Six Clerk may inform himſelf of the ſtate of the cauſe, of the long or ſhort dependance thereof in Court, of the antiquity of the publication, of the weight or value of the cauſe, and all other circumſtances material to inform the Lord Chancellor, Lord Keeper, or Maſter of the Rolls, at the time of the ſetting down of cauſes, and the Six Clerk may not refuſe to offer the ſame to be ſet down, if he be attended in ſuch time as aforeſaid, nor come unprepared to inform the Lord Chancellor, Lord Keeper, or the Maſter of the Rolls, of the nature and circumſtance of the cauſe aforeſaid. And neither he nor any of his Under-Clerks, nor any of the Regiſters, are to take any Fee, gratuity, or reward for the ſame.

No

No Money, or other reward, ſhall in any wiſe be exacted, or taken directly by any of the Six Clerks, or any of the Regiſters for, or in their behalf, for the preferring and ſetting down of any cauſe for hearing; but only ſuch Fees as are behind, and unpaid of their termly Fees and Duties, (if any be) and if any cauſe happen to be ſet down for hearing, wherein they ſhall not have been ſatisfied their due Fees and Duties, they may alledge the ſame in ſtay of hearing of the cauſe.

Proceedings in hearing Cauſes.

WHere no Councel appears for the Defendent at the hearing, and Proceſs appears to have been duly ſerved, the anſwer of ſuch Defendent ſhall be read; and if the Court upon ſuch hearing ſhall find cauſe to decree for the Plaintiff, yet a day ſhall regularly be given to the Defendent to ſhew cauſe againſt the ſame: but before he be admitted thereunto, he ſhall pay down to the Plaintiff, or his Attorney in Court, ſuch coſts as the Court upon that hearing ſhall aſſeſs, and the Order is to be penned by the Regiſter accordingly (*viz.*) *It is decreed ſo and ſo, &c.* Unleſs the Defendent ſhall by ſuch a day pay to the Plaintiff, or his Attorney in Court, coſts, and ſhew good cauſe to the contrary, and ſuch Defendent upon his ſhewing cauſe, ſhall firſt produce a Certificate from the Plaintiffs Attorney in the Court, that he hath paid the coſts, or *Affidavit* of tender or refuſal thereof.

Contempts.

ALl proceſs of Contempt ſhall be made out into the County where the party preſented is reſident, unleſs he ſhall be then in, or about *London*, in which caſe it may be made in the County where the party then is. And if any perſon ſhall be taken upon proceſs otherwiſe, or irregularly iſſued, the

party ſo taken firſt appearing unto, and ſatisfying the proceſs which did regularly iſſue againſt him, ſhall be diſcharged of his contempt, and have his full coſts to be taxed of courſe by the Six Clerks not towards the cauſe, for ſuch undue or irregular proſecution from the time that the Error firſt grew, without motion or other order.

Every Suitor who proſecuteth a Contempt, ſhall do his beſt endeavour to procure each ſeveral Proceſs to be duly ſerved, and executed upon the party proſecuted; and his wilful default therein appearing to the Court, ſuch perſon offending ſhall pay unto the party grieved good coſts, and loſe the benefit of the Proceſs returned without ſuch endeavour.

All Attachment in Proceſs ſhall be diſcharged upon the Defendent's payment, or tender to the Plaintiffs Clerk, and refuſal of the ordinary coſts of the Court, and filing his Plea, Anſwer or Demurrer (as the caſe regularly requires) but yet upon Motion in Court, or petition in that behalf.

And if after ſuch conformity and payment of the coſts (or tender and refuſal thereof) any further proſecution ſhall be had of the ſaid contempt, the party proſecuted ſhall be diſcharged with his coſts.

If after Apparance and Interrogatories exhibited as aforeſaid, the party appearing ſhall depart before he be examined (without leave of the Court) he is upon Motion and Certificate from the Regiſter, of ſuch his departing and not being examined, and of the Interrogatories exhibited from the Examiner, to ſtand committed without further day given unto him, and is not to be diſcharged from ſuch his contempt, until he hath been examined and cleared of his contempt. And if he ſhall upon his Examinations, or by proofs be found in contempt, he ſhall clear ſuch his contempt, and pay the Proſecutor his coſts,

costs, before he be discharged of his Imprisonment. And although he be cleared of his said contempt, yet he shall have no costs, in respect of his disobedience in not being examined without the Prosecutors trouble and charge in moving the Court as aforesaid.

In case of prosecution of a contempt for breach of an Order of the Court, or otherwise grounded upon an *Affidavit*, the Interrogatories shall not be extended to any other matter than what is comprehended in the said *Affidavit* or Order. And if any other shall be exhibited, the party examined may for that reason demur unto them, or refuse to answer them.

Where the party prosecuted upon a contempt, hath denied it, or the same doth not clearly appear by his examinations, the Prosecutor may take out a commission of course to prove the contempt; and in such case the party prosecuted may name one Commissioner to be present at the execution of the commission, and may henceforth (notwithstanding the former usage to the contrary) cross examine the Witnesses produced against him to prove the contempt, but is not to examine any Witnesses on his part, unless he shall satisfie the Court touching some matter of Fact necessary to be proved for clearing the truth. In which case the Court, if there be cause, will give leave to him to examine Witnesses to such particular points set down; and the other side may cross examine such Witnesses, but the Interrogatories on both sides are to be included in the commission.

Where a contempt is prosecuted against one, who by reason of Age, Sickness, or other cause, is not able to travel. Or in case the same be against many persons who are Servants or Workmen, that live far off, the Court will, upon Motion and *Affidavit*

thereof, grant a Commiſſion to examine them in the Country; which Commiſſion ſhall be ſued out and executed at the charge of the perſon or perſons deſiring it, directed to ſuch indifferent Commiſſioners, as the Proſecutors of the contempt ſhall name (as in other caſes) and one Commiſſioner only at the nomination of the party proſecuted as aforeſaid. Which commiſſion ſhall be executed at ſuch convenient time and place, as the ſix Clerks not towards the cauſe upon hearing the Clerks upon both ſides ſhall ſet down.

Upon every examination and proof of a contempt referred to any of the Maſters of the Court, to certifie whether the contempt be confeſſed, or proved, or not: The Maſter in his Certificate thereof made to the Court, ſhall likewiſe aſſeſs and certifie the coſts to either party as there ſhall be cauſe, without other Order or Motion made for that purpoſe.

Commitment.

THe Court being tender of the liberty of men's perſons, and to avoid their Impriſonment upon malicious *Affidavits*, which are often made by a mean and ignorant perſon, and which hath heretofore by the courſe of the Court drawn on a Commitment, doth order, That from henceforth, where Oath ſhall be made of miſdemeanour in beating or abuſing the party upon ſuing the Proceſs or Orders of the Court, the party offending ſhall ſtand committed upon Motion, and no examination is in that caſe to be admitted.

And when *Affidavit* ſhall be made by two perſons of ſcandalous or contemptuous words againſt the Court or the Proceſs thereof, the party offending ſhall likewiſe ſtand committed upon Motion, without any further examination. And a ſingle *Affidavit* in ſuch caſe ſhall be ſufficient to ground an Attachment;

ment; whereupon ſuch perſon ſhall be brought in to be examined: and if the miſdemeanor ſhall be confeſſed, or proved againſt him, he ſhall ſtand committed until he ſatisfie the Court touching his ſaid miſdemeanor, and pay the Proſecutor his coſts. And if he ſhall not be thereof found guilty, ſave by the Oath of the party who made ſuch *Affidavit*, he ſhall be diſcharged, but without any coſts, in reſpect of the Oath made againſt him as aforeſaid.

Decrees, and Diſmiſſions.

THat all Decrees and Diſmiſſions pronounced upon hearing the cauſe in this Court be drawn up, ſigned, and inrolled before the firſt day after the next *Michaelmaſs* or *Eaſter* Term, after the ſame ſhall be ſo pronounced reſpectively, and not at any time after, without ſpecial leave of the Court.

When the party is committed, or brought in by a Serjeant at Arms for breach of a Decree, he is not to be inlarged until he hath performed the Decree in all things that are to be preſently done, and given Security by Recognizance with Sureties, as the Court ſhall order to perform the other parts of the Decree (if any be to be performed) at future days and times appointed by the Decree.

No Decree or Diſmiſſion ſhall be preſented by the Regiſter of this Court, or his Deputy, or any other, to the Lord Chancellor, Lord Keeper, or Maſter of the Rolls, to be ſigned, before it be ſigned by that Six Clerk to whom it belongeth, of his proper hand writing, or by his Deputy in his abſence.

To the intent the Decrees and Diſmiſſions of this Court may be eaſily found upon ſearch, the Six Clerks are to keep a publick Book for the entring of all Decrees and Diſmiſſions which have been made and ſigned by the Lord Chancellor ſince

the 29th day of *May*, 1660. and which shall be made and so signed in this Court: And to that end, the Register shall at the beginning of every Term deliver unto one of the Six Clerks a List of all Decrees and Dismissions signed by the Lord Chancellor, the Term and Vacation before.

If a Bill be regularly and justly dismissed of course, or by Order for want of prosecution, no Motion shall be admitted for the Retainer thereof, without a Certificate from the Defendent's Attorney in Court, that the costs of the Dismission are paid, to the end unnecessary charge to the parties by several Motions for one and the same matter, may henceforth be avoided.

Masters.

THat the Masters do not pass any Exemplifications of Depositions taken in Chancery upon a bare sight of the Copies only, without first calling the Officer or Officers, who have the custody of the Records or Originals of such Copies, or some sworn Clerk of his, or their office, who are to produce the same before them, to warrant their signing thereof. The Masters are not upon the importunity of Councel (how eminent soever) or their Clients to return special Certificates to the Court, unless they are required by the Court so to do, or that their own Judgment in respect of difficulty leadeth them to it, such kind of Certificates for the most part occasioning a needless trouble, rather than ease to the Court, and certain expence to the Suitor.

Their Certificates and Reports are to be drawn as succinctly as may be (reserving the matter clearly for the Judgment of the Court) and without recital of the several points of the Orders of Reference (which do sufficiently appear by the Orders themselves) or the several Debates of Council before them

them: unleſs that in caſe where they are doubtful, they ſhortly repreſent to the Court the reaſons which induce them ſo to be.

The Maſters of the Court are to take notice, That when the Court requires to be ſatisfied from them, touching any matter alledged to be confeſſed, or ſet forth in the Defendent's Anſwer; It is intended, That without further Order, they ſhould take conſideration of the whole Anſwer or Anſwers of the Defendents, and certifie not only whether the matter be ſo confeſſed or ſet forth, but alſo any other matter avoiding that confeſſion, or ballancing the ſame, that the Court may receive a clear and true Information.

The Maſters in taking *Affidavits*, and adminiſtring of Oaths, in caſes duly preſented unto them, are to be circumſpect and wary, that the ſame be reverently and knowingly given and taken, and are therefore to adminiſter the ſame themſelves to the party; and where they diſcern him raſh or ignorant, to give ſome conſcionable admonition of his duty, and be ſure he underſtand the matter contained in his *Affidavit*, and read the ſame over, or hear it read in his preſence, and ſubſcribe his name or mark thereunto, before the ſame be certified by the Maſter, who is not to receive or certifie any *Affidavit*, unleſs the ſame be fair and legibly written without blotting, or interlineation of any word of ſubſtance.

In all matters referred to the Maſters of the Court, their Certificate (not being to ground a Decree) if it be poſitive, is to ſtand, and proceſs may be taken out to enforce performance thereof without further Motion, unleſs the adverſe party, upon notice given (to his Attorney or Clerk in Court) that ſuch Report is filed againſt him, ſhall within

eight

eight days after ſuch notice (if it be given in Term, or whilſt the general Seals for Motions are held, or within four days of the next Term, if it be given after) obtain ſome Order in Court to controul or ſuſpend the ſame, and in caſe of an inſufficient Anſwer certified by the Maſters, the Plaintiff may immediately take out Proceſs againſt the Defendent for his coſts, and to make a better Anſwer, as hath formerly been uſed.

Where after Certificate or Report made by the Maſters of the Court, either party ſhall appeal from the ſame to the Judgment of the Court, he ſhall firſt file his Exceptions thereunto briefly, with the Regiſter, and depoſite with him 40 ſhillings to be paid to the other party for the coſts, if he prevail not in ſuch appeal: And then the Regiſter ſhall enter ſuch cauſes of appeal in a paper, in order as they are brought unto him to be determined by the Court, in courſe upon days of Motions, and notice thereof to be given by the party appealing to the Clerk of the other ſide. And alſo the Regiſters paper to be ſet up in the Office two days before: And if the Court ſhall not alter the Maſters Report, then the 40 ſhillings depoſited to be paid to the party defending the ſame, with ſuch increaſe as the Court ſhall find cauſe to impoſe; otherwiſe to be reſtored to the party appealing, and both without charge.

The Maſters extraordinary ſhall not within twenty miles of *London* take any *Affidavits*, or acknowledgment of Deeds, or Recognizances, or do any other Act incident to the place of Maſter of the *Chancery*. And to the end it may appear, whether any Maſter extraordinary ſhall notwithſtanding preſume ſo to do, every ſuch Maſter ſhall expreſs the name of the Town and County where he ſhall take

take any *Affidavit*, or the acknowledgment of any Deed or Recognizance; otherwise the same shall not be held Authentical, nor omitted to be filed or inrolled.

Cursitor.

WHereas there is an irregular practice lately introduced of making forth Original Writs of *Clausum fregit* in Trespass, without any other cause of Action therein expressed of Returns past, when in truth the proper cause of Action is either Debt, Case, Ejectment, or some other cause of Action; and by process thereupon, the Defendent is is not only usually arrested, but frequently proceeded against to the Outlawry, to the great damage of the Subject, and the loss and diminution not only of the proper Original Writs issuing out of this Court, but also of his Majesties Revenue for the casual Fines thereupon due and payable: It is therefore Ordered,

That no Cursitor of this Court, from and after the first day of *Trinity* Term next ensuing, make, or cause to be made any Writs of *Clausum fregit*, or *Clausum & Domum fregit*, within the City of *London*, without special warrant from the Lord Chancellor, or Lord Keeper of the Great Seal of *England*, or Master of the Rolls for the time being, unless it be made appear by *Affidavit*, or some other probable evidence that the same is the true and proper cause of Action.

That no Cursitor of any other County do make, or permit to be made within his respective Division any of the said Writs of *Clausum fregit*, or *Clausum & Domum fregit*, of any other return, than of the last return of every respective Term, unless it be to warrant Arrests, and *Testatum Capias* only.

That

That no Curſitor ſhall from and after the end of *Michaelmas* Term next enſuing make, or permit to be made within his reſpective Office and Diviſion, any Original Writ whatſoever of any return paſt, unleſs he ſhall receive the Inſtructions for making thereof within the Term wherein the ſaid Writs are to be returnable; or at the fartheſt, on or before the firſt Eſſoyn-day of the next ſucceeding Term, without ſpecial Warrant from the Lord Chancellor, or Keeper of the Great Seal of *England*, or Maſter of the Rolls for the time being, or good cauſe to be allowed of by the Principal and Aſſiſtants of the Company of the Curſitors for the time being, or the Major part of them, at their publick meetings, according as heretofore hath been uſed.

The Curſitors are to take care that they employ under them in their Office none but perſons of known integrity and ability; and if any Clerks or perſons ſo employed, ſhall be found faulty in the premiſſes, he ſhall be expulſed the Office; and the Curſitor who ſo employed him, ſhall be anſwerable to the Court for ſuch Miſdemeanors; and ſuch perſon or perſons, who ſhall be diſcovered to do, or proceed otherwiſe than is before mentioned, ſhall be liable to ſuch cenſure for his offences as the Court ſhall find juſt to inflict upon him.

Petitions.

NO Injunction for ſtay of Suit at Law ſhall be granted, revived, diſſolved or ſtayed upon Petition; nor any Injunction of any other nature, ſhall paſs by Order upon Petition, without Notice, and a Copy of the Petition firſt given to the other ſide, and the Petition filed with the Regiſter, and the Order entred.

No Sequeſtration, Diſmiſſion, Retainers upon Diſmiſſions or final Orders, are to be granted upon Petition.

No

No former Order made in Court is to be altered or explained upon a Petition; or Commitment of any perſon taken upon Proceſs of Contempt, to be diſcharged, but upon hearing the adverſe party, his Attorney or Clerk, towards the Cauſe.

Paupers.

After an Admittance *in forma Pauperis*, no Fee, Profit or Reward ſhall be taken of ſuch party admitted by any Councellor or Attorney, for the diſpatch of the *Pauper*'s buſineſs, during the time it ſhall depend in Court, and he continued *in forma Pauperis*, nor any Contract nor agreement be made for any recompence or reward afterwards. And if any perſon offending herein ſhall be diſcovered unto the Court, he ſhall undergo the diſpleaſure of the Court, and ſuch further puniſhment as the Court ſhall think fit to inflict upon him, and the party admitted, who ſhall give any ſuch Fees or Reward, or make any ſuch Contract or Agreement, ſhall be from thenceforth diſpaupered, and not be afterwards admitted again in that Suit to proſecute *in forma Pauperis*.

If it ſhall be made appear to the Court, That any perſon proſecuting *in forma Pauperis*, hath ſold or contracted for the benefit of the Suit, or any part thereof, whilſt the ſame depends, ſuch cauſe ſhall be from henceforth totally diſmiſſed the Court, and never again retained.

Such Councel or Attorney as ſhall be aſſigned by the Court, to aſſiſt the perſon *in forma Pauperis*, either to proſecute or defend, may not refuſe ſo to do, unleſs they ſatisfie the Lord Chancellor of *England*, or Lord Keeper, or Maſter of the Rolls, who granted the Admittance, with ſome good reaſon of their forbearance.

That

That the Councellor who shall move any thing to the Court on the behalf of a person admitted *in forma Pauperis*, ought to have the Order of Admittance with him, and first to move the same before any other Motion. And if the Register shall find that such person was not admitted *in forma Pauperis*, he shall not draw up any Order upon the second Motion, made by any such Councel, but he shall lose the fruit of such second Motion, in respect of his abuse to the Court.

No Process of Contempt shall be made forth, and sent to the Great Seal, at the Suit of any person prosecuting as Plaintiff *in forma Pauperis*, until it be signed by the Six Clerk, who deals for him, and the Six Clerks are to take care, that such Process be not taken out needlesly, or for vexation, but upon just or good grounds, as they will answer it to the Court, if the contrary shall appear.

And lastly, It is Ordered, That all Masters of the Court of Chancery, Councellors, and all Officers, Ministers, Clerks and Solicitors in the said Court, do observe these Orders, which are to continue, until upon further consideration and experience, any Alterations shall be fit to be made therein.

Clarendon.

Har. Grimston.

THE

THE PRACTICE Of the COURT of EXCHEQUER.

THE *Exchequer* is an ancient Court, and in it are the Kings Receipts, and the yearly Revenues of his Crown recorded and kept. It is His Majesties common Treasury, and is called in Latin, *Scaccarium*; *à similitudine ludi scaccorum*, from the resemblance that the Chequer'd Cloaths there used bear to the Chess-board. And it is one of those four Courts of *Westminster*, which had their beginning beyond the memory of man. This Court, being a Court of Record, consisteth as it were of two parts, whereof one dealeth especially in the Judicial hearing and deciding of all Causes appertaining to the Prince's Treasure, anciently and still called *Scaccarium computorum*: The other is termed the Receipt of the *Exchequer*, and is properly employed in the receiving and paying of Money.

This Court is properly under the Rule and Government of the Lord High-Treasurer of *England*, the Chancellor of the *Exchequer*, the Lord Chief Baron, and three other Barons of the Coif, with whom also sits another Baron, but he hath no Voice in the Court as to any business, other than taking accounts of Sheriffs, Auditors, Bayliffs, and Receivers, &c.

The Lord Treasurer is the Keeper of the King's Treasure, and many Officers are at his appointment and dispose, as well within the *Tower* and *Exchequer*,

as

as elsewhere; as Auditors, Tellers, Receivers, and the like.

The Chancellor, who is also Under-Treasurer, governs this Court under the High-Treasurer, and in his absence for Orders and Commandments in Court, for the benefit of the Prince and ease of the Subject and Suitors, hath ever done what the Treasurer useth to do. He also maketh Warrants to any of the Remembrancers, to make all manner of Commissions, Processes, and Injunctions as the case requireth; yet in great Cases of the Court he makes the Lord Treasurer privy, and confers with him about the same.

The Lord Chief Baron is the next, who is sworn by the Lord Chancellor, or Lord Keeper for the time being, and is the chief Judge of the Court, and in matters of Law, Information and Plea, he answereth the Bar and all Suitors. He ever giveth Judgment in the Term-time only, and gives his directions to the Remembrancer in this manner: *If the King's Attorney say nothing for the King between this and such a day, for such a matter, enter Judgment for* A. B. *Or if the Party say nothing for such a matter, by such a day, enter Judgment for the King.*

The second Baron in the absence of the Lord Chief Baron doth answer the Bar in matters of Orders and Course: But in matters of Law, Difficulty or Importance, he referreth the Suitors to the Chief Baron's coming. He, and his Fellows, in the Chief Baron's absence, may do all in Court which he might do, and it is good in Law *per considerationem Baronum*. He giveth yearly the Oath to the L. Mayor, and Escheator of *Lond.* may take Recognizances in Court & out of Court & examines divers Letters & Accounts.

The third Baron differs little or nothing in power from the second; he gives Oaths to the Lord Mayor and Gaugers yearly.

The

The fourth Baron, if he be in Court, takes the Oath of all High-Sheriffs, Under-Sheriffs, &c. as also of all Collectors, Controllers, Surveyors, and Searchers of all the Custom-houses in *England*: he takes the Opposals of Sheriffs; he informs the Court and Kings learned Councel both in Court and out of Court, what the course of the *Exchequer* is, and doth in most other things as the second and third Barons.

The two Chamberlains may sit in Court if they please, but may not intermeddle with any thing, saving that in *Craft. animar.* they may deliver their opinions for preferment or stay of men to be Sheriffs. They have the charge of the Treasury with the Lord Treasurer, and keep the Keys thereof, where all the ancient Leagues between the Kings Progenitors and other Princes and States either do or should lye: and where the Book of Domesday, and the ancient Records and Pleas *de Justiciariis itinerant'*, and *de Forestis*, and divers other matters, do remain: Into which Treasury neither they nor their Deputies can come with their Keys, until the Auditor of the Receipt come with the Treasurer's Key, that remains in their keeping to My Lord's use.

The King's Attorney general is a special Officer of the Court made privy to all manner of Pleas that be not ordinary and of course, that rise upon the Process of the Court, and to the Replication and Rejoynders growing upon the same on any of the Remembranc. sides. And puts into the Court in his own name all Informat. of concealments of Customs, &c.

The Remembrancers are those which keep the Records of the *Exchequer* between the King and his Subjects, and enter the Rules and Orders there made, the one of them is called the King's Remembrancer, and the other the L. Treasurer's Remembrancer, and both their Offices are in the King's gift.

The Clerks of the Pipe are those which make Leases upon particulars, and do receive the Sheriffs accounts; They receive also the Bonds, Tallies, and other Assurances.

Other Officers belonging to this Court, are Auditors, Tellers, Collectors, Rent-gatherers, Tally-makers, Clerk of the Estreats, Forrein Apposer, Clerk of the Office of Pleas, in his Office, whose Under-Clerks are several Attorneys, the Controller of the Pipe, &c.

In the Office of the First-fruits, are received all First-fruits due to His Majesty by Bishops, Deans, and all other Ecclesiastical persons, answerable by order of Law.

The Offices in the inferiour or lower *Exchequer*, commonly called the Receipt, are these which follow:

The four Tellers of the Receipt, (whose Offices are in the Kings gift) do receive all the Kings Moneys paid into the Receipt, and do write a Bill thereof in parchment, expressing therein the Sum received by them, and of whom, and for what; which Bill they deliver not to the Party, that payeth the Money, but put it down through a trunk into the Chamberlain's Court for a Tally to be stricken for discharge of the party.

The Clerk of the Pell (in the Lord Treasurer's gift) keepeth the Pell in parchment, called *Pellis Receipt.* wherein every Teller's Bill with his name on it is to be entred, and under every such Bill, when it is entred *Recordatur* to be written in open Court for a Controlment to charge the Teller with so much Money as is mentioned in the Bill.

The Auditor of the Receipt (in the Lord Treasurer's gift) taketh up every Teller's Parchment-bill after the entry in the Pell, as aforesaid, and fileth it upon

upon a File, and then his Clerk, called *Scriptor. Taliar. & Contrarotall.* writeth double upon every Tally, the whole letter of the Teller's Bill.

The two Under-Chamberlains are the Chamberlain's Deputies for the Receipt, and their places in his gift; these clear and examine the Tallies, and cast the Foil into the Chamberlain's Cheft, until the Joyners of the Tallies fetch them away. The said Under-Chamberlains make all Searches in the Treasury for any Records at the suit of the Parties, and Copies, and Exemplifications of the same, whereof the Fees are divided between them, and the Keeper of the Lord Treasurer's Key.

The Cutter of the Tallies, in the Lord Treasurer's gift, he provideth his wood for the Tallies, and receiveth his dividend Fee, with the Clerk of the Pell, the *Scriptor Taliar.* and Under-Chamberlains.

The four ordinary Messengers of the Receipt (now in the King's gift) are pursuivants, attending the Lord Treasurer to ride and go upon all occasions according to command.

Thus much as to the Officers of the superiour and inferiour *Exchequer*; we come now to the Business of the Court.

The Matters of this Court are all penal Punishments, Intrusions, Alienations without Licence, penal Forfeitures upon popular Actions (that is, wherein a part is given to the Informer, the rest to the King) all Payments, Receipts and Expences of the Kings Revenue, wherein the usual Process at first is a *Subpœna*.

This Court hath in it a diverse way of proceeding. As first, there is a course of Proceeding suitable in most things to the Common-Law proceedings in the other Courts of Justice in *Westminster-Hall*, and that is in the Office of Pleas, wherein

there be several Clerks that are retained between Party and Party in all Suits commenced or depending there, who are to follow their Clients causes, and to make their Pleas, Answers, Replications, and Rejoynders upon the same for Counsel learned in the Law to consider, and to do nothing herein but what is lawful and practicable in the Court. The *Quominus* (grantable only out of this Office) was anciently to be granted to such a party only who was either Tenant or Debtor, or some ways accountant to the King, and therefore the end of the Writ concludes, that by default of the Defendents giving him satisfaction is less able to satisfie the King. And at this day the Practice is grown general almost, but especially in *Wales*, where no Writ out of the Kings Bench or Common Pleas lies, save only a *Cap. Utlagatum*, and these Writs so far relate together, that they both pretend to be by prerogative for the King. The Rules for Proceedings herein are so agreeable to the Practice of the Kings Bench, that the Rules before set down for that Court may very well serve for this.

The Exchequer Chamber.

THis Court is as it were the Chancery of the *Exchequer*, in which sit the Lord Treasurer, and Chancellor of the *Exchequer*, assisted with the Lord Chief Baron and the rest of the Barons, and the Proceedings had before them do much resemble the Proceedings in the Chancery. The whole Practice and Proceedings generally in use at the *Exchequer* Bar relate for the most part to the two Remembrancers of the Court; And anciently there was very much business, and very various in the King's Remembrancers Office relating to the Debtors, Tenants, Farmers, Receivers, Accountants, Bayliffs and Sheriffs, for Debts or Duties due to the King, &c. In the

the Treaſurer's Remembrancers Office all Licenſes of Alienation were wont to be pleaded, and all Proceſs to iſſue out for the Fines not paid unto them, and alſo all Proceſs for non-payment of reſpit of Homage, &c. And theſe ſeveral Offices, do in many things alſo follow the practice of the Common Law.

The difference between this Court and the Courts of King's Bench and Common Pleas in point of Appearance at the beginning of a Suit, that the Proceſs here upon Engliſh Bill is *Subpœna*, Attachment, Proclamation and Commiſſion. The Proceedings in this Court upon Engliſh Bill are as follow.

Every Plaintiff that ſhall exhibit ſuch Bill ought to be *privileged either in perſon*, as an Officer or Clerk of the Court, or Servant to ſome of them, or an Accountant and Debtor to the King or otherwiſe, or *elſe in the Cauſe*, as if that concern the King in the Inheritance, poſſeſſion, or intereſt in any Lands, Tithes, Offices, Goods, Chattels, or Debts, wherein the Plaintiff likewiſe pretendeth to have intereſt in right of the King, or if the Plaintiff be ſued by Engliſh Bill, or Action, or Extent, or other Proceſs in the ſame Court for the ſame matter.

The King's Attorney may exhibit Engliſh Bills in the *Exchequer* for any matter concerning the King in Inheritance or Profits; and in the like manner any perſon that findeth himſelf grieved in any cauſe, proſecuted againſt him for and on the behalf of the King, or any Patent by grant of the King may exhibit his Engliſh Bill againſt the King's Attorney and ſuch others as are intereſſed in the cauſe to be relieved in equity: In which caſe the Plaintiff muſt attend the K. Attorney with a copy of his Bill, and procure him to anſwer the ſame; And the King's Attorney may call any that are intereſſed in the cauſe, or any Officer, or others to inſtruct him herein touching

the making his answer so as the King be not prejudiced thereby, and his answer is to be put in without Oath.

The persons in every such Bill between Party and Party must serve the Defendent with Process of *Subpœna*; or if the Defendent be a Baron of Parliament either Spiritual or Temporal, under the hands of the Lord Treasurer, Chancellor, Barons or some of them, whereby he must be required to appear at a certain day contained in the writ, letter, or process of *Subpœna*. And if the Defendent do not appear at the day of the Return of the Writ, upon *Affidavit* made of the service thereof, an Attachment is made out against him of course for his contempt: But when any Letter is sent to any Baron or Bishop for appearance before the Bill be in, and if he will not appear upon that, then Process of *Subpœna* must be served as afore, and upon default Process of Contempt: And the like course of Process is to be pursued against the Defendent at the suit of the King's Attorney general.

When the Defendent doth appear, if the Bill be not put in, he may move to be dismissed with costs, whereupon the Court doth usually give three or four days to the Plaintiff to put in his Bill, or the Defendent to be dismissed with costs upon a Bill of costs to be tendred by him to one of the Barons to be taxed.

And if the Defendent do appear upon Process of contempt, he must pay costs such as the Court shall think fit, according to the number of the Processes which have been prosecuted against him: But the ordinary costs are 10 *s.* upon each Process.

After the Defendent hath appeared he hath eight days of course to make his answer to the Bill, and if he fail therein at that time, a Rule is given of course

in the Books of Apparance for an Attachment within four days, the Defendent's Attorney being called thereunto.

If the Defendent demur to the Bill, for that neither the Plaintiff nor the cause is priviledged, for want of sufficient matter of the Bill, or put in a Plea in bar of the proceeding upon the Bill; The Plaintiff, if he will maintain his Bill must move the Court for a day to hear counsel on both sides for arguing the same.

If the Defendent do plead any matter to bar the proceedings upon the Bill (other than matter of Record in the same Court) he must be sworn to his Plea, as likewise he must be sworn to his Answer, if he answer in the chief, of what quality soever the Defendent be, except if it be the King's Attorney who answereth a Bill against the King; or a Corporation who are sued by the name of their Corporation, which are both without Oath.

If the Defendent make an insufficient Answer, the Plaintiff must put in his Exceptions in writing, and move the Court to give the Defendent a day to amend or maintain his Answer; and if at the day he cannot maintain the same, but the Court doth order him to make a better Answer, he must pay such costs to the Plaintiff as the Court shall think fit: But if the Defendent demur, and support the demurrer at the arguing thereof, the Bill is to be dismissed with costs.

If the Defendent put in a Plea, wherein he pleadeth matter of Record to disable the person of the Plaintiff, as Outlawry, or the like, which is no bar to the matter, but a delay of Proceedings, until the Plaintiff be enabled to sue; he must together with his Plea produce the Record which warranteth the same.

If the Defendent, after he hath appeared and taken a copy of the Bill, findeth that he cannot make answer to the same without sight of his Evidences, which are in the Country far off, or if there be more than one Defendent, and one or more appear, and the rest do not appear, and the Defendents that do appear cannot answer without conference with the rest that are in the Countrey, upon *Affidavit* made upon such or the like allegations he may have time to answer until the beginning of the next Term, either in person or by Commission as the Court shall think fit. Or if *Affidavit* be made that the Defendent be aged, impotent, or sick, and not able to travel, he may have a Commission to take his answer; and sometimes when the Defendents dwell far off, the Court in favour doth grant a Commission without any *Affidavit* to take their answer in the Countrey; in all which cases, where a Commission is granted for the Defendent, the Plaintiff may name two Commissioners to see the Defendent sworn to his answer, and a *Proviso* must be in the Commission, that the Plaintiff or his Commissioners shall have notice of the day and place of execution thereof certain days before.

If the Defendent have matter to plead, and be not able to put it in upon Oath, he may by special order of the Court have a Commission to take his Plea, and the Plaintiff may proceed upon the Plea as upon an answer, if he please: But if the Defendent hath the favour to take his Answer and Plea, he may not after put in a Demurrer.

If the matter of the Bill be to be relieved against a Suit at or in the Ecclesiastical Court, and the Defendent stand in contempt either for not appearing or not answering; or if he desire to have a Commission to take his answer, the Court upon the motion

tion of the Plaintiff doth usually stay the Def. proceedings, until he have answered and other order be therein taken either by injunct. or order of the Court.

If the Defendent be served with Process to appear to a Bill, and be in prison, and will not appear, or if he do appear, and be in prison, and will not answer; the Court doth usually order, that he shall be kept close Prisoner until he yield obedience to the Court.

After the Defendent hath answered (or before, if there be good cause) the Court doth grant injunctions either to quiet possessions, or stay Suits at the Common Law or Ecclesiastical Courts until the hearing of the cause.

If the Defendent put in a Demurrer with an answer over to part of the matter of the Bill, the Plaintiff may proceed upon that to bring the cause to hearing, and the Defendent at the hearing may stand upon the Demurrer, until the Court over-rule it: but after an answer put in, the Court will allow no exception to the Jurisdiction.

When the Defendent hath fully answered, the Plaintiff if he will may go to hearing upon Bill and answer, and may move the Court for a day to that purpose, against which he must serve the Defendent with Process to hear Judgment; in which case he must admit the Defendents answer to be true in all things, as well in that which is denied, as that which is confessed: But if the Plaintiff do not find matter confessed by the Defendent in his answer, whereupon he may proceed to hearing without proofs, then he must reply to the same, maintaining his Bill, and denying and traversing the material points of the answer, wherein he may also add such further matter as shall be pertinent and necessary for him to offer for the strengthning his Bill, and avoiding the Defendent's answer, and he must serve the Defendent

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with a *Subpœna ad rejungendum*, except the Defendent be ordered to rejoyn *gratis*.

When the cause cometh to hearing upon Bill and Answer, and the Court sees no sufficient matter confessed in the answer to proceed upon, the Plaintiff may desire that he may reply and proceed to Process, and in some cases the Court will allow him so to do, specially where the King's Attorney is Plaintiff on the behalf of the King.

If there be more Defendents than one, and they put in several answers, the Plaintiff may reply to them all in one Replication, but if the cause of Suits be joynt, and some of the Defendents answer, and others stand out, in such case the Plaintiff cannot reply till all have answered: for if he do, he waves his proceedings against the rest, and he cannot have a Decree against some without the others.

When the Defendent comes to rejoyn, if there be no new matter in the Replication, he is to rejoyn of course to maintain his answer, but if there be new matter, he must rejoyn specially to that: And if there arise new matter in the Defendent's Rejoynder, the Plaintiff must sur-rejoyn, and so as long as new matter doth pertinently arise in the pleading, they must proceed with Rebutter and Sur-rebutter, until every point material be put in perfect issue.

After they are at issue, the Plaintiff if he will, may proceed to hearing, without examination of Witnesses on his side, but that hinders not the Defendent from examining in convenient time; or if there have been any former examinations in the same cause either between the same Parties or any other, under whom they claim, either in the same Court or any other, the Plaintiff or the Defendent may move the Court, and desire to have them allowed to be used for evidence at the hearing which

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the Court upon giving a day to the other ſide to ſhew cauſe, either grant or deny as they ſee cauſe.

After Iſſue joyned either Party may pray a Commiſſion to examine Witneſſes, and if the other ſide refuſe to joyn, ſhall have one *ex parte*: but if both Parties joyn, then either ſide is to name four perſons to be indifferent Commiſſioners, of which each party to chooſe two, and the Commiſſion is to be directed to thoſe four agreed on, of which Commiſſion the Plaintiff is to have the carriage, and to give fourteen days warning of the day and place of execution thereof.

If the one ſide will examine Witneſſes by commiſſion, and the other will not, yet he that will not examine may joyn in commiſſion to ſee an indifferent examination, if he will. In caſe where one ſide hath examined all his Witneſſes, and the other hath not, but hath the favour to have a new commiſſion, that party that hath examined may joyn without charges to ſee the examination.

As the Parties may examine their Witneſſes before Commiſſioners, as is before declared, ſo they may likewiſe examine before the Barons in Court ſuch Witneſſes as they have in Town at any time before publication, and they may have proceſs of *Subpœna* to that purpoſe. The names of ſuch as are examined in Court muſt be delivered by either ſide to the Parties or their Attorneys in Court before the examination, to the end they may be croſs examined, if the Parties pleaſe.

The parties that will examine their Witneſſes, muſt prepare their Interrogatories, ingroſſed in Parchment, to be exhibited to the Commiſſioners or the Baron, before whom they will examine before any examination can be had, which Interrogatories muſt be drawn according to the points in iſſue by

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the Bill, Answer, and other Pleadings, and there must be no alteration or addition after the first examination.

If a Witness be examined of one side, and after be served with process to be examined on the other, and he refuse, the Court will not allow his Depositions, because he hath shewed himself to be partial.

After Witnesses be examined either side may move for publication, or else in Term-time a Rule may be given, which ordinarily is a week; and if no cause be shewed according to the rule, then publication passes, and the cause to be set down to be heard at such time as the Lord Treasurer and the Barons shall appoint.

When the cause is set down to be heard, the Plaintiff must serve the Defendant with a *Subpœna ad audiendum Judicium*, returnable at the day and place appointed for the hearing, and in the mean time either party is to prepare his breviates of his Pleadings and proofs to instruct his Councel; at which day the Bill of causes is to be made ready, and delivered to the Lord Treasurer, Chancellor and Barons in Court, and so the Court doth call for them as they lye in the Bill, and if both sides be ready to proceed to hearing, the Plaintiff's Councel opens the material parts of the Bill, and the Defendant's Councel open the answer or answers, and after debating thereof on both by the Councel, the Plaintiff is to make his proofs, which are to be read by his Attorney in Court, and the Defendant is to do the like: Whereupon the Court doth judge *secundum allegata & probata*.

Sometimes nevertheless the cause is dismissed upon the first opening for want of sufficient matter, or for that it is meerly tryable at the Common-Law, and sometimes when there is both matter of Law and Equity, the matter of Law is referred to a tryal

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at the *Exchequer*-Bar, and the Equity retained until the hearing; and ſometimes when the queſtion is touching Accounts and Reckonings, which are intricate, the cauſe is referred to Auditors or Merchants by commiſſion to examine, and to mediate, and to determine the ſame, if they can, or elſe to certifie the Court of their doing.

Or if the queſtion be concerning the poſſeſſion of any Lands demanded by the Plaintiff, which lye intermingled and diſperſed with and amongſt the Defendant's Lands, and by reaſon of a long and joynt occupation cannot well be diſtinguiſhed the one from the other, in ſuch caſe when it doth appear to the Court that the Plaintiff hath and ought to have Land ſo intermingled, the Court will award a Commiſſion to ſome of the Neighbouring Gentlemen of that County where the Land lyes to enquire the certainty thereof, and to ſet out the Metes and Bounds, *&c.* of the ſame, and to certifie the Court thereof: And in ſuch like caſes References and Commiſſions are awarded.

If at the day of hearing the Plaintiff be ready, and the Defendant make default, *Affidavit* muſt be made that the Defendant was ſerved with Proceſs to hear Judgment, and the Court will proceed to hearing, and after the Plaintiff's Bill is opened, the Defendant's anſwer is to be read and the Plaintiff's proofs, whereupon the Court will decree or diſmiſs the cauſe, or otherwiſe order what ſhall ſeem fit: But in ſuch caſes the Court doth not uſe to make an abſolute Decree, but to give a day to the Defendant to ſhew cauſe againſt it, at which day if he come and endeavour to ſhew cauſe, but the Court allows not the ſame, then will the Court confirm their Decree, and the Plaintiff may require coſts for his double attendance.

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If the Defendent be ready at the day of hearing, and the Plaintiff make default, the Court doth dismiss the Defendent with costs, except good cause be shewed to stay that, and if it be put over to another day, the Plaintiff is to pay costs to the Defendent, such as the Court shall think fit.

When a cause is ready for hearing, if the Plaintiff delay the prosecution, or be negligent to procure a hearing, the Defendent may, if he will, procure the cause to be set down to be heard, and serve the Plaintiff with process to hear Judgment; at which day if the Plaintiff appear, he may proceed to hearing, but if he will not, the Defendent will be dismissed with costs, and left at liberty, if there were any injunction or order to restrain him.

If a Defendent die after answer put in, and before the cause be determined, the Plaintiff may put in a bill of *Revivor* against the Heir, Executor, or Administrator of the Defendent, as the case shall require, and the Defendent in such Bill of *Revivor* shall answer without Oath, because his answer is to no other purpose but to submit himself to the former proceedings, which upon his answer are revived, and shall stand in the same case as they did against the first Defendent that died, and afterwards the Plaintiff and the Defendent may proceed as in the original cause.

After a Decree is made against the Defendent, if he hath other matter which was not in issue in the cause decreed, which he supposeth will be sufficient to overthrow the Decree, he may exhibit a bill of Review upon that new matter to reverse the Decree, but first he must perform the Decree; and if the bill of Review do not contain good and sufficient matter, the Defendent may plead the former matter decreed in bar.

Some-

Sometimes the principal queſtion between the Parties is ſuch, as admitting the Truth on both ſides, yet it is doubtful in Law to whom the Right belongeth, ſo as the Court cannot make a Decree until the matter in Law be determined, whereupon a caſe is to be drawn and agreed on by both ſides, and if there be any matter of Fact neceſſary to be proved for the making of the caſe, Witneſſes may be examined upon Interrogatories for that purpoſe, and when the caſe is agreed, ſeveral Copies muſt be delivered to the Lord Treaſurer, Chancellor, and Ba. ns, and is to be argued on both ſides by Counſel, when, and as often as the Court ſhall think fit, and afterwards to be determined by Decree, or otherwiſe.

Upon hearing of a cauſe, the Court doth allow bills, and anſwers, and other pleadings, orders and decrees of the Chancery, and other Courts, to be read for Evidence without any order; but no depoſitions of Witneſſes taken in any other Court, nor in any other cauſe in the ſame Court without ſpecial order.

After a Decree is entred, it may be inrolled and exemplified at the inſtance of either party, or of any elſe that deſire it.

If the poſſeſſion of any Land be decreed againſt the Defendent, the Plaintiff may have an Injunction directed to him, and all that claim under him, commanding him and them to remove from the poſſeſſion and to yield the ſame to the Plaintiff and his Aſſigns, and if the Defendents diſobey, the Court upon Affidavit made thereof, doth uſually grant a Writ directed to the Sheriff to remove them and to put the Plaintiff in poſſeſſion.

If a Decree be in any thing diſobeyed, either by the Plaintiff or Defendent, or any other by their procure-

procurement, upon *Affidavit* thereof made, an Attachment is granted against such as have disobeyed, and so other process of contempt, until he be brought into Court to answer his contempt; And when he doth appear, if he deny the contempt alledged against him in the *Affidavit*, he must be examined upon Interrogatories to be exhibited by the Prosecutor of the contempt, before one of the Barons, and he must attend and appear from day to day until he be examined, and not to depart without license of the Court. After he is examined, if he have confessed sufficient matter to ground the contempt, the Prosecutor must move the Court to appoint a day to hear his examinations; at which day both sides are to attend, and such of the examinations to be read as are material, whereupon if it appear to the Court that he hath committed any contempt worthy to be punished, the Court will commit him to the *Fleet* (or lay a Fine upon him as the case requireth) where he is to remain during the pleasure of the Court, and until he yield obedience and perform the Decree, or enter into a Recognizance to do it, and he is to pay such costs to the Prosecutor as the Court shall tax.

If the Defendent upon his examination deny the contempt, supposed or alledged against him, he may move the Court to be discharged with costs, whereupon the Prosecutor may desire time to examine the Witnesses to prove the contempt, either in Court or by commission, in which the Defendent may joyn, if he please.

A Bill may be amended by order of Court after the Defendent hath answer'd upon payment of costs.

In every long Vacation all the Bills, Answers, Replications, Rejoynders, and other Pleadings are to be taken from the Common Files, and all the

the pleadings in one cauſe are to be filed together with the Bill, by him that is towards the Bill, and to be entred in a Book kept for that purpoſe in the Title of that County where the matter of Suit ariſeth, and to be numbred and then filed, according to the number on the file for the ſame County.

In caſes of extraordinary Contempts the Court ſometimes doth ſend a Meſſenger or a Sergeant at Arms to bring in the Offender.

The Fines for Reſpit of Homage every Fifth Term of Lands and Tenements.

For three pounds *per annum* downwards, 4 *d.*
For five pounds *per ann.* downwards, 8 *d.*
For ſix pounds thirteen ſhillings four pence *per annum* downwards, 1 *s.*
For ten pounds *per annum* downwards, 1 *s.* 8 *d.*
For eighteen pounds *per annum* downwards, 2 *s.*
For twenty pounds *per annum* downwards, 3 *s.* 4 *d.*
For thirty pounds *per annum* downwards, 5 *s.*
For forty pounds *per annum* downwards, 6 *s.* 8 *d.*
For ſixty pounds *per annum* downwards, 10 *s.*

And no ſuch Fines are ſet higher but upon Noblemen, which according to the greatneſs or meanneſs of their Lands, are ſet ſome at thirteen ſhillings four pence, ſome at twenty ſhillings, ſome twenty ſix ſhill. eight pence, ſome at thirty ſhillings, and ſome at forty ſhillings, to be paid every fifth Term, and none above, nor ſo high, but for Dukes.

The Fees in the Office of Pleas, are in a manner ſo little different from theſe in the Kings-Bench, that whoever hath read or knows the one may be ſatisfied with the other, and therefore we refer you to the Table of them without inſerting them here.

The Fees in Court upon the proceedings by Engliſh Bill, are as follow.

For a *Subpœna*, 2 *s.* 6 *d.*
For an Attachment, 2 *s.* 10 *d.*
For an Attachment and Proclamation, 2 *s.* 10 *d.*
For a Commiſſion of Rebellion, 18 *s.* 8 *d.*
For a Commiſſion to make an anſwer, 18 *s.* 8 *d.*
For a Commiſſion to examine Witneſſes, 18 *s.* 8 *d.*
For the appearance of every perſon, 1 *s.*
For Copies of Bills, Anſwers, &c. for every ſheet written on one ſide 8 *d.* beſides 1 *d.* for the Kings duty, in the whole *per* ſheet, 9 *d.*
For Ingroſſments by the ſheet, beſides the Kings duty, 8 *d.*
The Attorneys Fee for every Term, 3 *s.* 4 *d.*
For all Inrolments for every Roll, 13 *s.* 4 *d.*
For every ſpecial Writ, *viz.* Writs of Priviledge, Iujunction, *Superſedeas*, Extent, *Scire facias*, *Fieri facias*, *Certiorari*, *&c.* 7 *s.* 10 *d.*
For every Writ of *Venire facias*, and Writ of Attendance, &c. 2 *s.* 6 *d.*
For every *Diſtringas Jur.* 4 *s.*
For every Rule to plead or anſwer, 1 *s.*
For filing every Bill, 2 *s.*
For entring and enrolling a Recognizance, 5 *s.* 8 *d.*
Drawing up of Orders, Pleas, &c. by the leaf, 1 *s.*
To the Baron for allowing every Bill, 2 *s.*
To the Baron for ſigning every common Order, 2 *s.*
To each Baron for ſigning a Decree, 6 *s.* 8 *d.*
To each of their Clarks, 2 *s.*
For every *Affidavit* ſworn before them, 1 *s.*
For every Deed acknowledged before them, 6 *s.*
To the Clerks, 2 *s.*
For every Bill of Coſts taxed, 2 *s.*

Where

Where an Under-Sheriff is to pass his Account in the Exchequer, *the charge is as follows: There may be some difference as the nature of the Account may be, but not much.*

FOr the Tally upon payment of Proffers, 2 *s.* 8 *d.*
For the entry of the same Tally, 1 *s.* 4 *d.*
Where the Sheriff is dead, for the *Diem clausit extremum*, whereby upon account Execution is to be returned, 10 *s.* 4 *d.*
For the Warrant of Attorney, 1 *s.*
For the entry thereof, 8 *d.*
For the Ushers Fees, and Poor mans Box, 13 *s.* 4 *d.*
To the Controller of the Pipe, 16 *s.* 8 *d.*
To him more in regard of, &c. 3 *s.* 4 *d.*
To the Clerk to the Controller for the Summons in regard of, &c. 5 *s.*
To the Clerk of the Pipe in part of his Fee, 1 *l.*
To the Lord Treasurer's Remembrancer, 13 *s.* 4 *d.*
To the forreign Opposer for charging of the green Wax, and making the Scrowl thereof, 1 *l.* 6 *s.* 8 *d.*
To him for the allowance of the wages of the Justices of the Peace, 18 *s.*
To the Clerk of the Estreats for the portage of Books, *As you can agree.*
To the Under-Clerk of the Pipe for the like, *As you can agree.*
To the President of the forreign Account, *In like manner.*
The Fee in regard of the Justices of Assize for their Diet, 10 *l.*
To the Attorney for the entry thereof and other Petitions, 2 *l.*

To the ſaid Attorney for his ordinary Fee for the whole year, and to receive the Writs and Precepts, &c. 1 l. 6 s. 8 d.

To him in regard of, &c. for every Term, during the account till finiſhed, 3 s. 4 d.

To his Clerk in regard of, &c. 10 s.

The Copies of the Sheriff's Seizures, according to the number of them.

The old Seizures, for each, 1 s.

The new Seizures, for each, 1 s.

To the Clerk in regard of, &c. 3 s. 4 d.

To the Kings Remembrancer's Office, for each thereof, and for joyning the Tallies, 3 s. 4 d.

On the Lord Treaſurer's Remembrancers ſide on the like, 3 s. 4 d.

For allowance of the ſame Tallies of payments of Money in the receit of the *Exchequer*, 1 s. 4 d.

For joyning the ſame, 1 s.

For allowance of the ſame, 1 s.

For every day that is given to the Sheriff in reſpect of his accounts, 6 s. 8 d.

For the entry thereof, 2 s.

To the Uſher for proclamation when the Sheriff is ſaid to be caſt out of Court, 2 s. 6 d.

For the *Quietus eſt*, the making and allowing the ſame, 1 l.

To the Baron for his Fees, for taking and allowing the forreign accounts, 6 s. 8 d.

To the ſame Baron for examining the Sheriffs Schedule, 6 s. 8 d.

The ordinary charge of paſſing another Account.

FOr the delivery and receipt of three Certificates, 1 s.

For delivery of the King's part of the Books of Extent to the Auditor, 6 d.

To the Auditors man for a Bag, 6 d.

For

For a warrant of Attorney, 8 *d.*
To the Teller, for receiving of the Money and making a Bill thereof, 4 *d.*
To the Auditors man for allowing the Certificate, 1 *s.* 6 *d.*
To the Auditors man for ingrossing the Accounts, 4 *s.*
To the Barons man for reviewing and allowing the Warrant of Attorney, 2 *s.*
For entring the Accounts on the Kings Remembrancers side, 1 *s.*
For the like entry with M. 1 *s.*
For joyning their two Tallies, 8 *d.*
For the *Quietus est*, 3 *s.* 4 *d.*
For entring the *Quietus est*, 2 *s.*
For the Attorneys Fee, 3 *s.* 4 *d.*

Thus have we lead you by the hand, as it were, through the Court of *Exchequer*, wherein we have used as much brevity as might be, in regard the Office of Pleas so nearly agrees with the Kings-Bench, and the *Exchequer*-Chamber with the Chancery, so that the Proceedings and Fees are in a manner all the same; but you are to take notice, that where we have set down the Fees of the *Exchequer* in the preceding Table, they are the old Fees without the addition of the new imposition or duty paid to the King, except where it is particularly so mentioned. And that you may the better know what that duty to be paid is in all Courts, we have here abridged the Act for settling the same, at the end of the Book.

THE LAWS and CUSTOMS OF LONDON.

WE muſt in the ordering of this Part ſomewhat vary from the former method, for therein we only diſcourſed of the ſeveral Courts and proceedings thereof, but here before we can come to the Courts, we meet with ſeveral Acts of Parliament, Charters Royal, Liberties, and Cuſtomes granted to the ſaid City and Citizens, of which we here give you the following account.

And we begin with *Magna Charta*, which in the 9*th* Chapter ſaith thus: "The City of *London* ſhall "have all their old Liberties and Cuſtoms, which it "hath been uſed to have, and all other Cities, Bur- "roughs and Towns: And the Barons of the Five "Ports, and all other Ports, ſhall have their Liber- "ties and free Cuſtoms.

In the ſeventh year of King *Henry* the Seventh, there was a very beneficial Charter made for the City of *London*, for thereby the Citizens thereof ſhall enjoy all their Liberties, Priviledges and Franchiſes, *Licet uſi non fuerint, vel abuſi fuerint.*

There is an expreſs *Proviſo* in 32 *H.* 8. *cap.* 20. That that Act ſhall not be prejudicial to *London*; The like alſo in 33 *H.* 8. *cap.* 39.

The Mayor of *London* may remove all Kiddles in the Waters of *Thames* and *Medway*, and conſerve the peace between *London* and the Bridge of *Stanes*, 13 *H.* 2. *cap.* 9.

The

The Liberties of the *Gilda Teutonicorum* are confirmed, ſaving to the Mayor and Sheriffs of *London* their Liberties, 19 *H.*7.*cap.*21. See Tit. *Stilyard.*

That *London* ſhall take *Scavage*, (called *Shewage*) of any Merchant Denizen within the City, according to the Right of the City, but not in other Towns, 19 *H.*7.*cap.*8.

The general Act for Tithes doth not extend to *London*, becauſe there is no other Act for it, 27 *H.*8. *cap.*21.

Every one who bringeth Victuals to *London*, may ſell it without diſturbance to Fiſhmongers, Butchers, Poulterers, and others, 31 *E.*3. *cap.*10. *Victual* 4. and the ſame is in 28 *E.*3.*cap.* 10.

That all Sellers and Victuallers, as well Fiſhmongers as others, with their Victual coming to *London*, be under the governance of the Mayor and Aldermen, as anciently they uſed to be, 7 R.2. 11.

Note, that the allowance for finding of Orphans, according to the ancient Rates and Cuſtoms of *London*, or other City where the like Cuſtom is, ſhall not be taken for Uſury, 13 *H.*8. *cap.*8.

That no Citizen of *London*, or other the Kings Subjects, inhabiting the Five Ports or other, being free of Priſage or Butlerage of Wines by Grants, Cuſtom, or otherwiſe, cuſtom no Wines of any perſon not being free of Priſage and Butlerage, 1 *H.*8. *cap.*5, 3 *H.*7. *cap.*7.

In the 14*th* of *Henry* the Eighth, an Act was made that all Aliens in or about *London*, ſhall be within the governance of the Corporation of the myſtery or craft whereof they are, 14 *H.*8.*cap.*2. And in 22 *H.*8.*cap.* 16. another Act was made, That ſuch Strangers ſhould pay Scot and Lot, Tax and Tillage, &c. as the Maſters, Wardens, and Companies do; and they ſhall make Oaths, &c. with an exception for

Merchants of the Stilyard, that they ſhall not pay any other Cuſtoms than they uſed by their Franchiſes, but that every other Denizen ſhould.

That Aliens and Denizens may buy and ſell Merchandizes coming to *London*, in groſs and not by retail, paying the Cuſtoms; and ſhall not be diſturbed by the Citizens of *London*, notwithſtanding any Franchiſe heretofore proved to the Citizens of *London*, 7 *H.*4.9. 25 *E.*3.*cap.*2.

The Mayor and Wardens of the Sheermen of *London* ſhall enter and ſearch the Workmanſhip of all manner of perſons uſing the Broadſheers, as well for Fuſtian as Cloth; and for the execution of that Art, as well of Denizens as Foreigners and Strangers, 11 *H.*7.27.

That the Mayor of *London* and the Wardens of Tallow-chandlers ſhall ſearch all Oils, that they be not mixt, and they to have the puniſhing of them, and ſo in all Towns, 3 *H.*8.*cap.* 14. *Oils* 1.

What wages Watermen ſhall take upon a paſſage to divers places from *London*, 6 *H.*c.7. And eight perſons of the Watermen to be appointed yearly by the Mayor of *London*, to be the Overſeers and Rulers of all Wherries between *Graveſend* and *Windſor*, 2 & 3 *Mar.*c.36.

That every Houſholder of the age of twenty four years, who dwells within any City or Town corporate, exerciſing any Art, Myſtery, or mutual Occupation, may retain the Son of any Freeman not uſing Husbandry in it, or of another Town, to be bound as an Apprentice according to the Cuſtom of *London* for ſeven years at the leaſt. See the Statute of 5 *Eliz.cap.*4.

Concerning Attaints and Enqueſts there, ſee 11 *H.*7.*cap.*21. Attaint 13. 37 *H.*8.*cap.*5. 5 *H.*8. 35. Jurors 14, 15.

In

In divers Cases by the Custom of *London* a man shall be admitted to wage his Law, where otherwise he shall not; and that by 39 *H.*6.34,35. 38 *E.*3.*c.*5. 5 *H.*4.*c.*8.

A Feme covert being a sole Merchant, shall have Actions without her Husband by the Custom of the City of *London*; and an Action may be likewise brought against her without naming her Husband, 1 *E.*4.*P.* 1. 35 *H.*6.38.

In *London*, Debt upon a simple Contract is good against an Executor, *M.*1.*E.*4.6.*P.*1.

By the Custom of *London* a Merchant may cause his Debtor to come before the *Mayor* of *London*, and a Clerk by the King appointed, to acknowledge his Debt and the time of payment. See the Statute of *Acton Burnel*, 11 *E.*1.*Recogn.*2.

The Custom of *London* is, that one may be arrested before the day of payment, to find better surety, 11 *H.*6.8.*p.*1. But he shall not recover before the day of payment, 5 *E.*4. *London* 24.

There is a Custom in *London*, that they have a common Market for all Goods, Chattels, and Merchandizes, bought and sold in every part of the City, in all Streets and Shops every day in the week, except Sunday, from Sun-rise to Sun-set. *Book Entr.* 317.*p.*1. *M.* 35.*H.*6.33. And therefore a prescription to hold a Market every day in *London* is good, though the Sunday be forbidden by the Statute, and that it shall be forfeit.

An Action of Covenant lieth in *London* without a specialty, and divers other Actions by Custom, which do not lye at the Common Law; and of small Contracts under forty shillings, for which an Action doth not lie by Writ.

Of a Contract made beyond Sea, and upon account here between the parties, if the party by Bill

grant

grant to pay it upon the recoming, then *Conceſſit ſolvere* lies in *London:* For before that account there was no remedy for it by the Common Law, nor indeed in *England*; and although that the Bill doth recite the Merchandize, yet the *Conceſſit ſolvere* doth not rehearſe the Merchandize ſold, but ſays generally, for Goods and Merchandizes *ſibi prius vendit', conceſſit ſolvere, p.* 38. *H.* 6. 30 *p.* 1.

It is not a good Cuſtom to keep Goods of any perſons put to him in his pledge, until he be paid; But the cuſtom of Attachment in *London* is good. See the caſe of *Tenant* and *Heydon*, *Mich.* 12 *Jac.* in *Calthrops Reports* 27.

By the Cuſtom of *London* in an Action of Debt the Defendent ſhall have four Defaults, and if he cannot be found, but hath ſhut up his Shop and is gone, a Precept ſhall be to a Sergeant at the Plaintiffs Requeſt to ſequeſter the Goods in his Houſe, 11 *H.* 7. 2. *p.* 2.

Debt was upon the Cuſtom in *London*, becauſe the Plaintiff and three others were bound joyntly and ſeverally in one Bond, and one pays all the Debt, or part or the whole is recovered againſt him, he may have an Action againſt the other Obligors to make contribution, *Entr.* 1600.

The Mayor and Aldermen have always uſed, and may by Cuſtom of the City of *London*, cauſe to come before them the Offenders which are taken within the ſaid City for Lies and falſe News ſpread abroad in diſturbance of the Peace; Makers and Counterfeiters of falſe Seals and falſe Evidences: and for other notorious Deceits known to them, and ſuch perſons as they find guilty of ſuch Malefacts, either by confeſſion or by inqueſt, they may take and puniſh them by the Pillory, Impriſonment, and other chaſtiſement, at their diſcretion.

All

All the Lands and Tenements, Rents and Services within the ſame City and the Suburbs thereof, are by Uſage deviſable there, ſo that Men and Women may deviſe their Tenements, Rents, and Reverſions within the ſaid City and Suburbs to whom they pleaſe: And thoſe which are Freemen thereof may deviſe their Tenements in *Mortmain*, as will appear by the Kings Charter, to that effect and purpoſe made.

Where Reverſions or Rents are deviſed by Will inrolled in the *Huſtings* of Record, the ſame Reverſions and Rents, after the death of the Teſtator, are ſo to be executed, that thoſe to whom ſuch Rents are deviſed, may diſtrain for them and make Avowry: And thoſe in Reverſion may ſue out a Writ of Waſt at their will without any Attornment of the Tenants, and may plead by the ſame Inrolment, if need be, though they have not the ſame Teſtament: And the ſame Cuſtom taketh place for Deeds of Lands inrolled in the *Huſtings*, and ſuch Inrolments have been always uſed ſo, that the Wills are proclaimed and proved in full *Huſtings*.

Where a man hath deviſed by his inrolled, &c. certain Rent to be taken of his Tenants within the ſaid, &c. without a clauſe of Diſtreſs: yet by the Cuſtom he to whom the deviſe is made may diſtrain and avow the taking for the Rent behind, and in the ſame ſort it ſhall be done for Amerciaments, and Rents, called Quit-rents, within the ſaid City.

The Mayor and Aldermen for the time being, by Cuſtom ſhall have the Guardianſhip and Marrying of all the Orphans of the ſaid City after the death of their Anceſtors, although they held elſewhere out of the City of any other Lord. And the ſaid Mayor and Aldermen ought to enquire of all the the Lands, Tenements, Goods, and Chattels in the ſaid City, appertaining to ſuch Orphans, and the

ſame

ſame to ſeize and ſafely keep to the Orphans uſe, or elſe to commit the ſaid Orphans with their Lands to their Friends, upon ſufficient Security of Record in the Chamber of the ſaid City, to maintain the Orphans, ſupport their Eſtate, and to account to the ſaid Mayor and Aldermen for all the profits, when the Infants come of age, be put to a Trade, or married by the advice and conſent of the ſaid Mayor and Aldermen.

The Citizens of *London*, by their Cuſtoms, ought not by any Writ to go out of the City in any ſort to paſs upon an Inqueſt.

The Wife after the death of her Husband by Cuſtom of the City, ſhall have her Frank-bank or Free-bench: that is, a Woman after her Husbands death ſhall have of the Rents within the ſame City whereof her Husband died ſeized in Fee: And in that Tenement wherein the Husband and ſhe did dwell together at the time of the Husbands death, the Woman ſhall have to her ſelf wholly the Hall, the principal Chamber, and the Cellar, and ſhall have the uſe of the Oven, the Stable, Privy and Yard in common, with other neceſſaries thereunto belonging for her life: But at the hour of her next Marriage ſhe loſeth her Frank-bank and her Dower of the ſame, ſaving her Dower of other Tenements, as the Law requireth.

If a Freeman of the ſaid City, coming or going with Merchandizes elſwhere out of the ſame City, be conſtrained to pay Toll or Cuſtom, or that his Goods be arreſted, or carried away wrongfully, without reaſonable cauſe, and not delivered again by the Governour of the Town, when complaint is made, and it be ſufficiently teſtified by credible men, then if afterwards the Goods or Merchandizes of him that did the wrong, or the Goods or Merchandizes

chandizes of any other of the ſame Town where the wrong was done, be found within the City of *London:* It is the Cuſtom at the ſuggeſtion of the Party to arreſt ſuch Goods and Merchandizes by the Officers of the City, and to detain them in the name of a *Withernam*, until an agreement be made with the Freeman for his Damages ſuſtained in that behalf, except always reaſonable anſwer be alledged by the other Party.

The City of *London* hath Conuſance of Pleas by the Kings Charter, the uſe is that no Freeman of the ſaid City ſhall implead another Freeman of the ſame elſewhere than in the ſaid City, where he may recover within the ſaid City, upon pain of loſing his freedom.

Thoſe which have Tenements within the ſaid City, ſhall not be ſuffered to ſtrip or waſt their Tenements, nor to take them down in a diſorderly manner to the deforming or diſgracing the ſaid City, unleſs it be to amend them or build them up again, and any that doth or beginneth to do it ſhall be puniſhed by the Mayor and Aldermen for the offence, according to the Cuſtom of the ſame City.

And alſo the Citizens of *London* heretofore have claimed and ought to have many Liberties and Priviledges in the *Eyr* at the *Tower of London, viz.* They ought to have their Porter ſtand within the Gates of the *Tower*, and their Uſher at the Hall-door, without, where the Pleas ſhall be held within the *Tower*, during all the *Eyr*, for the bringing in of the People of the City, which have to do in the ſame *Eyr*; and the Uſher of the King ſhall no otherwiſe meddle there during all the *Eyr* of that thing which apperrains to the Office of the Sergeant. And that the Citizens ſhall make no other Oath but by the Faith they owe to our Lord the King.

No

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No

No man ſhall blow any Horn in the Night within this City, or whiſtle after the hour of Nine a clock in the Night, under pain of Impriſonment.

No man ſhall uſe to go with Vizards, or diſguiſed by Night, under like pain of Impriſonment.

That Night-walkers and Eaveſdroppers endure like puniſhment.

And there are many other Points and Priviledges which will more fully appear in ſundry *Eyrs* holden at the *Tower* of *London*. And alſo many other Liberties, Priviledges, and Cuſtoms are pertaining to the City of *London*, whereof no man can remember them all to ſet them down in writing, being only recorded by mouth, when they came in truth by cuſtom of the ſame City, *viz.* at the laſt *Eyr* held at the *Tower* of *London*, they ought to be bound by the Cuſtoms, whereupon the Citizens did exhibit their Petition to the King in theſe words:

High and Mighty Lord, Whereas your ſaid City is founded upon the Franchiſes and free ancient Cuſtoms, and not upon the Common Law, as other Cities of Your Realm, and whereas it is enacted by the Great Charter, that the City of London *ſhould enjoy all its Franchiſes and free Cuſtoms unblemiſhed, and the ſame Franchiſes and Cuſtoms be to them by Your Progenitors granted, and by Your ſelf confirmed, and they ever from time to time uſed in* Eyrs *and elſewhere before the Juſtices at what hour they do come indeed, or demanding their Franchiſes and Cuſtoms; and that by a Statute made after the laſt* Eyr, *and to put their Franchiſes and Cuſtoms in Certain, which things no man can remember.*

May it pleaſe Your Majeſty to command all the ſaid Juſtices, that they be ordered in point of challenge of their ſaid Franchics and Cuſtoms, as they were wont anciently to be ordered in other Eyrs *before the Statute, and that by no Statute repugnant to their ſaid Franchiſes*

and

and Cuſtoms, they be deprived of their ſaid Franchiſes and ancient Cuſtoms. And thereupon a Writ was ſent to the Juſtices to ſurceaſe, in this form:

Whereas in time paſt, there aroſe by ſome a matter of Doubt, of and upon the moſt ancient Cuſtom, had and uſed in the City of London, *of thoſe things which by Tenants for term of life, or for years, were fixed to the Houſes, without ſpecial Licenſe of the Lord of the Soil, whether they ſhould remain to the Lords of the Soil as parcel of the ſame, or whether it ſhould be lawful for ſuch Tenants at the end of their Term, all ſuch things that be fixed to remove.*

Whereupon ancient Books being viewed, and many Records ſearched, and ancient Proceedings and Judgments of the ſaid City: It was declared by the Mayor and Aldermen, That by the old preſcript Cuſtom of the aforeſaid City, every of the ſaid kinds of Eaſements fixed to Houſes or to the Ground by ſuch kind of Tenants without ſpecial and expreſs licence of the Lord of the Soil, if they be fixed with nails of Iron or Wood, as Penthouſes, Glaſs, Locks, Benches, or ſuch like, or if they be affixed with Lime or Clay, commonly called Mortar, as Fornace, Lead, and ſuch other, &c. It ſhall not be lawful for ſuch Tenants at the end of their Terms, or at any time, to pluck down, remove or root out them, or any part of them by any means, but they always remain to the Lord of the Soil, as parcel of the ſame Soil or Tenements, &c.

By an Act of Parliament made in the 14*th* year of His now Majeſty King *Charles* the Second, It is enacted, That all and every perſon inhabiting within the Cities of *London* and *Weſtminſter*, Suburbs and Liberties thereof, and Borough of *Southwark*, or in any the new built Streets, Lanes, Allies and publick places before their reſpective Houſes, Buildings and Walls,

Walls, twice every week, *viz.* Wedneſday and Saturday, all the Soil, Dirt and Filth ſhall cauſe to be taken up into Baskets, Tubs, or other Veſſels, ready for the Scavenger or other Officer to carry away, upon pain of three ſhillings four pence for every offence or neglect reſpectively.

That no perſons whatſoever ſhall throw, caſt, or lay any Seacoal-aſhes, Duſt, Dirt, or other Filth within the ſaid City and places aforeſaid, in any Place, Lane, Street, or Alley before his, her, or their own Dwelling-houſes, Buildings or Walls, on the penalty of five ſhillings: And if before the Houſes, Buildings, &c. of any of their Neighbours, or other Inhabitants of the ſaid Cities or Places, or before or againſt any Church, Church-yard, or any of his Majeſty's Houſes, Buildings or Walls, or any other publick Houſes, Buildings, &c. or caſt, lay, or throw, &c. into any common or publick Sink, Vault, Water-courſe, common Sewer or High-way within the Cities or Places, &c. or any other private Vault or Sink of any of his Neighbours or other, any Duſt, Aſhes, Filth, Ordure or other noyſom thing whatſoever, but ſhall keep or cauſe the ſame to be kept in their reſpective Houſes, &c. until ſuch time as the Raker, Scavenger or other Officer do come by or near their Houſes or Doors, with his Cart, Barrow, or other thing uſed for the cleanſing of the Streets, and carrying away thereof. And then ſhall carry the ſaid Aſhes, Duſt, &c. out of their Houſes, and deliver it to the Raker, Scavenger, or Officer, or otherwiſe put the ſame into his Cart, &c. upon pain to forfeit twenty ſhillings for every offence.

The reſpective Church-wardens, Houſe-keepers of *Whitehal*, or other His Majeſties Houſes, Houſe-keepers or Porters of Noblemens Houſes, Uſhers,

or

or Keepers of the Courts of Justice, and all other Publick Houses and Places shall be lyable respectively to suffer such like Penalties, forfeitures, and punishments for every like forementioned offences, done or suffered to be done before any Church, Churchyard, or before any his Majesty's Houses, Noblemen's Houses, Buildings, or before any other publick Houses or Places whatsoever respectively.

No person shall hoop, wash or cleanse any Pipe, Barrel, or other cask or vessel in any the Streets, Lanes or other Passages aforesaid, nor set out any empty Coaches to make or mend, or rough Timber, or Stones to be sawn or wrought in the Street, upon pain of twenty shill. for every offence.

The Rakers, Scavengers, and Officers hereunto appointed, every day in the week (except Sundays and other Holy-days) shall bring Carts, Dung-pots, or other fitting carriages into all the Streets, within their respective Wards, Parishes, and Divisions, where such carts, *&c.* can pass, and at and before their approach, by bell, clapper, or otherwise, shall make loud noise and give notice to the Inhabitants of their coming, and so into every Court, Alley, or Place where carts can pass, and abide or stay there a convenient time, that all persons concerned may bring forth their respective Ashes, Dust, *&c.* to the respective carts, *&c.* All which the said Rakers, Scavengers or other Officers shall carry away upon pain of forty shillings for every offence or neglect.

All the open Streets, Lanes, and Alleys within the Cities and Places aforesaid, are to be sufficiently repaired at the costs of the Housholders in the said Streets, Lanes, *&c.* respectively, *viz.* Every Householder to repair and pave, and keep repaired and paved the Streets and Lanes, *&c.* before his House unto the Channel or middle of the same Street,

or Lane, &c. upon pain of forfeiting twenty ſhillings for every rod, & after that proportion for a leſs quantity for every default, and twenty ſhillings for every week after, until it be ſufficiently paved and amended; provided ſuch ancient Streets, Lanes, &c. within the ſaid Cities, or either of them, the Suburbs or Liberties thereof, as by Cuſtom and Uſage have been repaired in other manner, ſhall hereafter be repaired, paved, and amended in ſuch ſort, by ſuch perſons as have uſed to repair, pave, and maintain the ſame, under the penalties aforeſaid.

Every Houſholder within the Cities and places aforeſaid, whoſe houſes adjoyn unto or is next the Street, from *Michaelmas* till our Lady-day yearly ſhall ſet or hang out Candles or Lights in Lanthorns, or otherwiſe in ſome part of his Houſe next the Street, to enlighten the ſame for Paſſengers from ſuch time as it ſhall grow dark till Nine of the clock in the evening, upon pain of one ſhilling for every default.

Every Juſtice of either Bench, Baron of the *Exchequer*, and Juſtices of the Peace of *London* and *Weſtminſter*, have power on their own view and proof by one Witneſs upon Oath, to convict perſons offending againſt this Act, and to diſpoſe the penalties towards the mending and cleanſing the Highways, if upon proof half to the party informing, if upon conviction by view, then the whole to the repairing and cleanſing the Streets or Ways, to be levied by Warrant from any Juſtice under his hand and ſeal directed to the Conſtable or other Officer of the ſame Pariſh, by Diſtreſs and Sale of his Goods, and for default (if no Peer) impriſonment until payment.

Within *London* and the Liberties thereof, the Scavengers, Rakers, and ſuch like Officers, ſhall be elected, and the rates and aſſeſſements for them, for the

the cleanſing of the Street ſhall be rated, raiſed, and paid by the Pariſhioners and Inhabitants of every Pariſh and Precinct, according to the ancient cuſtom and uſage of the City; and all new Meſſuages, Tenements, and Houſes ſhall be rated and aſſeſſed, and pay proportionable with the other. In *Weſtminſter* the ſaid Officers ſhall be choſen according to the cuſtom of that City, and the rates paid according to the cuſtom of that City, in all other Pariſhes or Places upon every *Tueſday* or *Wedneſday* in *Eaſter* week. The Conſtables, Churchwardens, and Overſeers for the Poor, Surveyors of the High-ways of every Pariſh aforeſaid, giving notice and calling together ſuch Inhabitants as have born the like Offices, they or the greater number of them ſhall appoint two that are Trades-men in their Pariſhes, to be Scavengers for the Streets, *&c.* of each Ward to continue for a year, who ſhall perform the Office, upon the pain of 20 *l.* but upon refuſal others ſhall be choſen: The ſame penalties to be levyed and employed for mending the Streets and Ways of the ſame Pariſh, by Diſtreſs and Sale of the Offenders Goods and Impriſonment by default, by Warrant as aforeſaid.

Within twenty days after Election of ſuch Officers, a Tax or Pound-rate ſhall be made by the Inhabitants of every Pariſh, which being confirmed by two Juſtices of the Peace, ſhall be paid quarterly upon demand by the Officers appointed, and upon refuſal, levyed by diſtreſs and Sale of Goods by Warrant from two Juſtices of the Peace, and for lack of Diſtreſs by Impriſonment of the Offender (not being a Peer) till payment.

Provided all Actions againſt perſons for executing this Act ſhall be laid in their proper County, and the Defendant may plead and recover double coſts, if wrongfully vexed.

By the ſame Statute no Hackney Coachman Licenſed, ſhall take for his hire in or about the City of *London* and *Weſtminſter*, above ten ſhillings for a day, reckoning 12 hours to the day; and not above eighteen pence for the firſt hour, and twelve pence for every hour after, and no Gentleman or other perſon ſhall pay from any of the Inns of Court, or thereabouts, to any part of St. *James* or *Weſtminſter* above twelve pence, and the ſame rates to the ſame places or thereabouts, back again; and from any of the ſaid Inns of Court, or thereabouts, to the *Royal Exchange* twelve pence; To the *Tower* of *London*, *Biſhopgate*-ſtreet, *Algate*, or thereabouts, eighteen pence, and ſo from the ſaid places to the Inns of Court, and the like rates from and to any place of like diſtance: And if any Coachman ſhall refuſe to do, act, or exact more for his hire than thereby limited, he ſhall for every offence forfeit ten ſhillings.

And thus much for the Cuſtoms of *London*, we now proceed to the ſeveral Courts there.

COURT of CONSCIENCE.

THe beginning of this Court, by as much as appears from any Record, is no other than thus: In the 9th year of *H.* VIII. there was an Act of Common-Council made the firſt of *Feb.* That the Lord Mayor and Aldermen of *London* for the time being, ſhould monthly aſſign 2 Aldermen and 4 diſcreet Commoners to be Commiſſioners to ſit in the ſame Court twice a week, *viz.* Wedneſday and Saturday, there to hear and determine all matters brought before them between party and party (being Citizens and Freemen of the ſaid City) in all caſes where the due Debt or Damage did not exceed forty ſhillings; And this Act was to continue but for two years then

next

next enſuing; but being found charitable and profitable for the relief of ſuch poor Debtors as were not able to make preſent payment of their Debts, and to reſtrain malicious perſons from proceeding in their wilful Suits, and alſo to be a great eaſe and help to ſuch poor perſons as had ſmall Debts owing to them, and were not able to proſecute Suits in Law for recovery of the ſame elſewhere. The ſame Act hath ſince been continued by divers other Acts of Common-Council, and hereby (beſides the two Aldermen monthly aſſigned) the number of the Commiſſioners were appointed from four to twelve; And by that authority, and in that method hath the ſame Court continued till the end of the Reign of Queen *Elizabeth*. And then divers people being Citizens and Freemen of *London* (contrary to their Oaths formerly taken) murmuring at the authority of the ſame Court, which hinders them from working their unjuſt intention upon their poor Debtors, and being animated thereto by divers pettyfogging dealers in the Law for their own particular gain, did daily commence Suits for ſuch petty Debts and Cauſes againſt poor men (Citizens and Freemen of *London*) in the High Courts of *Weſtminſter*, or elſewhere out of the ſaid Court, to avoid the Juriſdiction of the ſame Court, and to bar the ſaid Commiſſioners from ſtaying ſuch Suits, many times cauſed the poor men to pay ſix times as much charges as their principal Debt or Damage did amount to, to the undoing ſuch poor men and their Families, by caſting them into priſons, whereas they might have gotten their Debts in the ſaid Court for very ſmall charge and little trouble: For remedy of the ſame and the ſtrengthning and eſtabliſhing the ſaid Court, an Act of Parliament was made *Anno primo Jacobi*, That every Citizen and Freeman of *London*

that had or ſhould have any Debts owing unto him not amounting to forty ſhillings by any Debtors (Citizens and Freemen of *London*) inhabiting in *London*, or the Liberties thereof, ſhould or might cauſe ſuch Debtors to be warned to appear before the Commiſſioners of the ſaid Court, and that the ſaid Commiſſioners, or the greater number of them, ſhall from time to time ſet down ſuch Orders between ſuch parties Plaintiff and Defendant, Creditor and Debtor, touching ſuch Debts not exceeding forty ſhillings, as they ſhould find to ſtand with Equity and good Conſcience.

But ſince the making of that Act, divers evil-minded perſons have taken hold of ſome doubtful and ambiguous words therein, and have wreſted the ſame to a wrong ſence, to the avoiding the Juriſdiction of the ſame Court, contrary to the true meaning of the Act.

For remedy whereof, and for the furthering, ſtrengthning, and eſtabliſhing the ſame Court, and for the Relief of ſuch poor Debtors, another Act of Parliament was made *Anno* 3 *Jac.* whereby the Authority of the ſaid Commiſſioners was much enlarged, *viz.* That every Citizen and Freeman of *London*, or every other perſon or perſons inhabiting or that ſhall inhabit within the City of *London* or the Liberties thereof, being a Trades-man, Victualler, or Labouring man, which have or ſhall have any Debts owing to him or them, not amounting to forty ſhillings, by any Citizen or Freeman [or by any other perſon or perſons (being a Victualler, Trades-man, or Labouring man) Inhabiting within the City and Liberties thereof] ſhould or might cauſe ſuch Debtors to be warned to appear before the ſaid Commiſſioners of the ſaid Court of Requeſts; And the ſaid Commiſſioners or any three or more of them, ſhall have pow-

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er to ſet down ſuch orders between Plaintiff and Defendant, Creditor and Debtor, touching ſuch Debts not amounting to forty ſhillings, as they ſhall find to ſtand with Equity and good Conſcience; And alſo the ſaid Commiſſioners, or any three or more of them, have power to adminiſter an Oath to the Creditor or Debtor, and to ſuch Witneſſes as ſhall be produced on each part, and alſo to commit to Priſon in one of the Compters ſuch Creditor or Debtor as ſhall not appear upon lawful Summons, or not perform ſuch order as the ſaid Commiſſioners, or any three or more of them ſhall ſet down.

And by this laſt repeated Act this Court is eſtabliſhed and continued to this day. And the practice and rule thereof is well known to moſt Citizens and Freemen in *London*.

The courſe is by Summons, to which if the party ſummoned appear not, the Commiſſioners make an order to commit him; if he appear, they proceed ſummarily to Judgment, examining both parties and Witneſſes upon Oath, and as they ſee cauſe give Judgment without more ado.

The COURT *of the* HUSTINGS, *holden in the* Guild-hall *for the City of* London.

THis Court is both famous and ancient in its Name and Power: It is called in *Latin* ſometime *Huſtingum*, ſometime *Huſtingus*, and otherwhile *Huſtingia*, and may properly be derived from two *Saxon* words, *viz.* HUS, *Domus*, a Houſe, and DHING, or Thing, *Cauſa*, and is as much as *Domus Cauſarum*. And this in 11 *H.* 7. 21. *in F. N. B. fol.* 23. and 9 *E.* 1. *cap. unico.* 10. is termed, *Antiquiſſima & celeberrima Londoniarum Civitatis Curia ſuprema.* Of its Antiquity we find this mention in

the Laws of King *Edward the Confeſſor*, in theſe words, *Debet etiam in* London *quæ eſt caput Regni & Legum ſemper Curia Domini Regis ſingulis ſeptimanis die Lunæ* Huſtings *ſedere & teneri: fundata erat enim olim & ædificata ad inſtar & ad modum & in memoriam veteris magnæ* Trojæ: *Et uſque in hodiernum diem, leges, & jura, & dignitates, libertates, regiaſque conſuetudines antiquæ magnæ* Trojæ *ſe continet, & conſuetudines ſuas una ſemper invialabiliter conſervat.* This Court is held before the Lord Mayor and Aldermen of *London* and the Sheriffs, every week upon Munday and Tueſday, that is to ſay, Munday to enter Demands, and award Nonſuits, and allow Eſſoyns, and on Tueſday to award Defaults and to plead, ſaving at certain times and Feſtival days, and other reaſonable cauſes, at which time no *Huſtings* may be kept by cuſtom of the ſaid City. And here we are to take notice, That all the Lands, Tenements, and Hereditaments, Rents and Services within the City of *London* and the Suburbs of the ſame, are pleadable in the Guild-hall within the ſaid City in two *Huſtings*, of which the one is called, *Huſting of a Plea of Land*, and the other is ſtiled, *Huſting of Common-Pleas*. In the *Huſtings* of a Plea of Land, are pleaded Writs of right Patent, directed to the Sheriffs of *London*, in which Writs there are ſuch Proceſs by the cuſtom of the ſame City, *viz.* The Tenant or Tenants at the firſt ſhall have three Summons at the Tenements demanded at three *Huſtings* of Plea of Land next following, after the livery of the Writ and of the *Huſtings*, without demand of the Tenements at any the *Huſtings* aforeſaid; and after the three Summons ended, three Eſſoyns at three other *Huſtings* of Plea of Land then next enſuing; and at the next *Huſtings* after the third Eſſoyn, if the Tenants make default, Proceſs ſhall be made againſt them

them by *Grand Cape* or *Petit Cape* after appearance, and other Proceſs as at the Common-Law. And if the Tenants ſhall appear, the Demandants ſhall declare in the nature of what Writ they will, except certain Writs which are pleadable in the *Huſtings* of Common-Pleas, as ſhall hereafter be ſhewed, without making proteſtation to ſue in the nature of any Writ: And the Tenants ſhall have the view, and be aſſigned after the view at the Common-Law, and ſhall alſo have the Tenants eſſoyned after any appearance by the Cuſtom of the ſaid City.

And although one ſuch Writ be abated by exception of Joyntenancy, or other exception dilatory, and another ſuch Writ be revived, the Tenants by the cuſtom of the City, ſhall have the view in the ſecond Writ, notwithſtanding the view had before: And if the Parties plead to Judgment, the Judgment ſhall be given by the Recorder's mouth, and ſix Aldermen were wont to be preſent at leaſt at the giving of every ſuch Judgment: And every Beadle of the City, by the advice of his Alderman, ſhall againſt every *Huſtings* of Plea of Land cauſe to be ſummoned twelve men of the beſt Freeholders of his Ward to come to *Guild-hall* to paſs in an Inqueſt, if need be, for the reſt of the Freeholders in the ſaid Ward: And if the Parties pleading be come to an Inqueſt, then ſhall the Inqueſt be taken of landed men, being Freeholders in the ſame Ward where the Tenements are, and other three Wards neareſt adjoyning to the place where the Tenements are, ſo that four men of the ſame Ward where the Tenements are ſhall be ſworn in the ſame Inqueſt, if there be ſo many. And no Damages by the cuſtom of the City are recoverable in any ſuch Writ of right Patent.

And

And the Inqueſt may paſs the ſame day by ſuch common Summons of the Beadle, if the parties be at Iſſue and the Jurors come; otherwiſe proceſs ſhall be made to cauſe the Jury to come at the next *Huſtings* of Plea of Land by precept from the Mayor directed to the Sheriffs; who ſhall be Miniſters by commandment of the Mayor, to ſerve the Writs, and do execution thereof, although the Original be directed to the Mayor and Sheriffs in common, And here we are to take notice, that as well the Tenants as Demandants may appoint their Attorneys in ſuch Pleas. And if the Demandants count againſt the Tenants in the nature of a Writ of Right, and the parties come to a Jury upon the meer right, then ſhall the Jury be taken of twenty four, in the nature of a grand Aſſize, according as the cuſtom requires, that ſix of the ward be of the Jury of twenty four; and the Tenants in all ſuch Writs may vouch to Warranty within the ſaid City: And alſo in a forreign County, if the Vouchers be not Tenants within the ſame City; and if the Tenants in ſuch Writs vouch to warranty in a forreign County, in this caſe proceſs cannot be made againſt the Voucher by the Law of the City: but the record ſhall be brought before the Juſtices of the Common Pleas at the Suit of the Demandant, and then proceſs ſhall be made againſt the Vouchee, and when the Voucher ſhall be ended in the ſaid Bench, then all the Parol ſhall be ſent back again to the *Huſtings*, to proceed further in the Plea according to the cuſtom of the City, and certain Statutes touching the ſame: And alſo if the Tenants in ſuch Writs pleaded in Bar by Releaſe bearing date in a forreign County, or forreign matter be pleaded that it cannot be tried within the City: then the Demandant ſhall cauſe the proceſs to be brought into the King's Bench, to try the

the matter there, as it is alledged, and as the matter is found, the proceedings ſhall be ſent back again into the *Huſtings* to proceed further therein as the caſe requires, and all the ſame time the Suit ſhall ceaſe in the *Huſtings*, in manner as it is done at this day: And alſo it hath been uſed heretofore that a man may ſue in the *Huſtings* of Pleas of land, to have execution of a Judgment given in the *Huſtings* in nature of a *Scire facias* without Writ. And it is to be underſtood, that every ſuch Summons made to the Tenants in a Writ of right Patent is made two or three days before the ſaid *Huſting*, or the Sunday, or morrow next before the ſame *Huſtings*.

If erroneous Judgment be given in the *Huſtings* of *London* before the Mayor and Sheriffs, it ſhall be reverſed by commiſſion out of the Chancery directed to certain perſons to examine the Record and Proceſs.

If erroneous Judgment be given before the Sheriffs in *London*, the Defendent may ſue a Writ of Error before the Mayor and Sheriffs in the *Huſtings*.

The HUSTINGS of Common Pleas.

IN the *Huſtings* of *Common Pleas* are pleadable Writs called, *Ex gravi Querela*, to have execution of the Tenements out of the Teſtaments which are enrolled of Record in the *Huſtings*. Writs of *Dower unde nihil habet*, Writs of *Gavelet* of Cuſtoms and Services inſtead of a *Ceſſavit*, Writs of *Error* of Judgment given before the Sheriff, Writs of *Waſte*, Writs *de Partitione facienda* among Partners, Writs of *Quid juris clamat & per quæ ſervitia*, and other Writs which are *cloſe* and directed to the Mayor and Sheriffs: And alſo *Replegiaries* for Goods and Diſtreſſes wrongfully taken. Theſe are all pleadable before the Mayor and Sheriffs in theſe *Huſtings* of Common Pleas by plaint without Writ.

And

And it is to be understood that the same Sheriffs are Ministers, to execute the Office and to serve these *Writs* and *Replegiaries* by the Mayors Precept directed to the Sheriffs.

And the proceeding on the several Writs is thus:

FIrst, In the Writ of *Ex gravi Querela* warning shall be given two or three days before hand, *viz.* before the *Hust.* to the Tenants, as in a Plea of Land: And so shall be done of all other Summons touching the same *Hustings*. And if warning be given and testified by the Sheriffs or their Ministers, the Tenants may not be essoyned, and if the Tenants make Default at the same warning testified, then the *Grand Cape* shall be awarded: And if they appear, they may be essoyned at or after the view; and thereupon all other processes are made plainly, as is said, in a Writ of *Droit Patent* in the *Hustings* of a Plea of Land.

In a Writ of *Dower unde nihil habet*, the Tenants shall have at the beginning three Summons, and one Essoyn after the three Summons, and afterwards shall have the view, and after the view one Essoyn: And the Tenants in such Writ of Dower shall have the view, although they enter by the Husband himself demanding the same, and notwithstanding he died seized: And also the Tenants may vouch to warranty, and be essoyned after every apparance, and all other process shall be made as in a Writ of Right in the *Hustings* of Pleas of land aforesaid. And if the Demandant recover Dower against the Tenant by Default or by Judgment in Law in such writ of Dower, and the same Wife of the Demandant alledgeth in Court of Record that her Husband died seised; Then the Mayor shall command the Sheriffs by precept, that they cause a Jury of the Vicinity where the Tenements are, against the next

Hustings

Huſtings of Common Pleas to enquire if the Huſband died ſeized, and of the value of the Tenements and the Damages ſhall alſo be enquired of by the ſame Jury.

In a Writ of *Gavelet* the Tenants ſhall have three Summons and three Eſſoyns, they ſhall alſo have the view, they may vouch to warranty Denizen and Forreigner, and they ſhall be eſſoyned, and they muſt enter their exceptions, and all other proceſs ſhall be made as is before declared in a writ of Right of *Huſtings* of Plea of lands, ſaving if the Tenant make Default, then the Demandant ſhall have Judgment to recover and hold for a year and a day, upon this condition, that the Tenant may come within the ſame year and day then next following, and agree for the arrearages, and find ſurety as the Court ſhall award, to pay the Rent or the Services faithfully afterward, he ſhall have again his Tenements. And within the ſame year and day the Tenant may come and cauſe the Demandant to come in Court by a *Scire facias*, and have again his Tenements doing as aforementioned: But if the Tenant come not within the year and day, then the Demandant ſhall have a *Scire facias* againſt the Tenant to come and anſwer, if he can ſay any thing why the Defendent ought not to recover the Tenements quietly to him and his Heirs for ever: And if the Tenant come not to ſhew cauſe, then Judgment ſhall be given, that the Demandant ſhall recover quietly the Land for ever, according to the Judgment called *SHARTFORD*, by the cuſtom of the ſame City.

In a Writ of Waſt, proceſs ſhall be made by Summons, Attachment, and Diſtreſs, according to the Statute in that behalf made: And if the Tenant come and plead, then he ſhall have an Eſſoyn, and

ſo

ſo after every appearance; and if he make default at the grand Diſtreſs, then ſhall commandment go to the Sheriff by precept from the Mayor, that the Sheriff ſhall come to the place waſted, and enquire of the Waſt and Damages according to the Statute, and that they return the ſame at the next *Huſtings* of Common Pleas and the Plaintiff ſhall recover the place waſted, and treble damages by the Statute.

In a writ of Error of Judgment given in Court before the Sheriffs in Actions perſonal and in Aſſizes of *Novel Diſſeiſin* or *Mortdanceſter* taken before the Sheriffs and the Mayor, the writ of Error ſhall be directed to the Mayor and Sheriffs, and the Mayor ſhall make his precept to the Sheriffs, to cauſe them to bring the Record and proceſs at the next *Huſtings* of Common Pleas, and that they warn the parties to hear the Record. And after the Record and Proceſs be in the *Huſtings*, although the Defendent come by warning or make default, the Errors ſhall be aſſigned, and there the Judgment ſhall be affirmed or reverſed as the Law requireth: And it is to be noted, that by the cuſtom of the ſame City that when a man is condemned in Debt, or Attaint of damage in any Action perſonal before the Sheriffs, and bringeth ſuch a writ of Error, he which bringeth the Writ, muſt before he be delivered out of priſon find ſufficient ſureties of men reſident within the City, to be bound before the Mayor and Sheriffs to pay the Money, or to bring in the Body in caſe the Judgment be affirmed. And in like manner it ſhall be done when Damages are recovered in Aſſizes before the Sheriffs and Coroners.

In a writ of *Replegiari* the proceſs is this: If any man take a Diſtreſs, or other thing within the ſaid City, he who oweth the Goods may come to one of the Sheriffs, and ſhall have an Officer at the command

mand of the Court to go to the party that took the Goods; And if he may have the view of them, he may appriſe the ſame by two honeſt men, and then there ſhall be a plaint entred in the Sheriffs Office, called the Paper-Office, in this form:

A.B. *queritur verſus* C. D. *de Averiis ſuis injuſtè capt. in Dom. ſua vel in libero tenemento ſuo in Parochia, &c.*

And then the party ſhall find two ſufficient Sureties to purſue his plaint, and to make return of the Goods or the value thereof, in caſe that a return be awarded, and ſo he ſhall have the deliverance: And the parties ſhall have a day prefixed at the next *Huſtings* of Common Pleas, and then the Sheriff ſhall make a Bill containing all the matters and the plaint, and ſhall carry the Bill to the ſame *Huſtings*, and there it ſhall be put upon the File, and the parties ſhall be called: at which day both the one and the other may be eſſoyned of the common Eſſoyn: And if the Plaintiff make default, return ſhall be awarded to the Avowant, and return in ſuch caſe is awardable three times by the cuſtom of the City, and the third time not repriſeable: but if the Avowant make default, then it ſhall be awarded that the ſame Goods ſhall remain, that is, they ſhall remain without recovering any Damages: And if the Sheriff cannot have a view of the Diſtreſs taken, then he ſhall ſo certifie into the ſaid *Huſtings*, and there ſhall be awarded a writ of *Withernam*, and thereupon proceſs ſhall be made: And if the parties come and Avowry be made, they may plead to a Judgment, or to an Iſſue of Enqueſt according as the caſe requires, and the parties may be eſſoined after every appearance, and if the party claim property in the Diſtreſs, and that be certified in the *Huſtings*, proceſs ſhall be made by precept directed

to

to the Sheriff to try the property. And though the party be essoined of the Kings service in a *Replegiare*, and at the day that he hath by Essoyn, make default, or bringeth not his warrant, he shall not be cleared of damage.

In a writ *de Partitione facienda*, to make partition between Parceners of Tenements in *London*, a close Writ shall be directed to the Mayor and Sheriffs, containing the matter according to the form of such Writ, and the parties shall be warned by precept from the Mayor directed to the Sheriffs: and the Tenants may be essoyned, and if they come they may plead the matter, and if they make default, the writ of Partition shall be awarded by Default. And every Beadle of the said City, by the advice of his Alderman against every *Hustings* of Common Pleas shall summon twelve men, being Freeholders, of the best and most sufficient of his ward, to come to the aforesaid *Guild-hall*, and to pass in Juries, if need be, if there be so many Freeholders in the said ward; and the Juries shall be taken, as before is said, in the *Hustings* of the Plea of land.

And note, that writs of *Exigent* are taken out of the *Hustings*, as well of Common Pleas as Pleas of land: but those *Exigents* that are in the one *Hust.* are not to be sued in the other *Hust.* And at the fifth *Hust.* the Outlawries and *Venire*'s shall be awarded in full *Hust.* before the Mayor and Aldermen by the mouth of their Recorder; and also all Judgments that are given in the *Hustings* shall be given in the same manner, and the *Exigent* after every *Husting* shall be inrolled and sent into the Chamber of the *Guild-hall* aforesaid.

And here we are to take notice, that all the Amerciaments made at or incident to the said *Hustings*, pertain

pertain to the Sheriffs of the ſaid City: And that the Aldermen of *London* ſhall be ſummoned to come to the *Huſtings*, & ought by the Cuſtom of the City to be ſummoned by one of the Sheriffs Officers, ſitting upon a Horſe of a hundred ſhillings price at the leaſt.

Of an Aſſize of Mortdanceſtor *in* London.

THe Aſſizes of *Mortdanceſtor* are held and determinable before the Sheriffs and the Coroners of *London* on the Saturdays from 14 to 14 days, at the *Guild-hall*, the proceſs whereof is in this manner: He that will have ſuch an Aſſize, ſhall come into the *Huſtings*, or into the Aſſembly of the Lord Mayor and Aldermen in the Chamber of the *Guild-hall*, any Munday, (as is ſaid in the Aſſize of Freſh-Force) and ſhall make a Bill containing the form of the Aſſize of *Mortdanceſtor* according to the caſe, and the Bill ſhall be enrolled: And afterward the common Clerk ſhall make another Bill containing all the matters of the firſt Bill, making mention of the Title of the *Huſting*, or of the day of the Aſſembly of the Mayor and Aldermen: and this Bill ſhall be ſent to the Sheriffs, or one of them, to be ſerved according to the Cuſtom, and may be ſerved by any Sergeant or other Miniſter of the Sheriff, *viz.* The ſaid Sergeant the Wedneſday next after the delivery of the Bill, ſhall make his Summons at the Tenements demanded by Witneſs of two Freeholders of the City that they be at the *Guild-hall*, the Saturday next following to array and ſummon the Jurors, and ſo afterwards againſt the Saturdays from 14 days to 14 days at his will: and ſo may the Tenants ſue if they will for their deliverance; and the arraignments of the Panels of ſuch Aſſize ſhall be made by the Sheriffs and their Miniſters, or by the Mayor and Aldermen, if

any of the parties ſhall require it upon any reaſonable cauſe, in ſuch ſort as is uſed in Aſſize of Freſh-force. And in ſuch Aſſizes of *Mortdanceſtor*, the parties may be eſſoyned as at Common Law, and the Tenant may vouch to Warranty within the ſaid City, and alſo in a forreign County, if the Vouchee have no Lands or Tenements within the City. And if the Tenant plead a Releaſe, bearing date in a forreign County, or other forreign matter that may not be tried within the City, or that they vouch to warranty in a forreign County him that hath nothing within the City, then at the Suit of the party the Record ſhall be brought into the Court of our Lord the King by a Writ delivered to the Sheriffs and Coroner, and there ſhall ſuch forreign Pleas and forreign Vouchers be tried and determined, and then ſent back again to the ſaid Sheriffs and Coroner, to go forward and proceed according to the cuſtom of the City; and continuance ſhall be made in ſuch Aſſizes upon the cauſes aforeſaid, and upon other cauſes reaſonable: And when the Aſſizes ſhall be determined and Judgment given, then the Aſſizes ſhall be engroſſed and entred upon record by the ſaid Sheriffs and Coroner, and afterwards ſent to the *Guild-hall* to remain there of record, according to the order of Aſſizes of Freſh-force, hereafter following.

Aſſizes of Novel Diſſeiſin, *called Freſh-force in* London.

THe Aſſizes of *Novel Diſſeiſin*, called Freſh-force of Lands and Tenements, and Rents within the City of *London*, of Diſſeiſins made within forty weeks are held and determinable before the two Sheriffs and the Coroner of the ſaid City in Common every Saturday in the *Guild-hall*, except certain times wherein they may not be held for reaſonable cauſes,

cauſes, and the proceedings therein are in this manner:

When any man is aggrieved and diſſeiſed of his Freehold within the City or Suburbs thereof, he ſhall come to any *Huſting* held at the *Guild-hall*, or for want of the *Huſting* to the Chamber of *Guild-hall* to the Aſſembly of the Mayor and Aldermen any Monday, and there ſhall a Bill be made in this form:

A. *de* B. *queritur verſus* C. *de* D. *de libero tenemento ſuo in Parochia de* E. *in Suburb.* London.

And the ſame Bill ſhall be enrolled, and thereupon another Bill ſhall be made containing the whole matter of the former Bill, by the common Clerk of the City, making mention of the Title of the *Huſting*, or of the day of the Aſſembly of the Mayor and Aldermen; and that Bill ſhall be ſent to the Sheriffs, or one of them, to execute the proceſs and do right to the parties. And then ought the Bill to be ſerved the Wedneſday next enſuing, *viz.* the Sheriffs Officer to whom the Bill is delivered, ſhall ſummon the Tenant or Tenants named in the ſaid Bill of Aſſize by the view of two Freemen of the City, and that at the Tenements where the Diſſeiſin is made, or at the Tenements whereout the Rent is ſuppoſed to be iſſuing, and it ſhall be ſaid there to the Tenants, that they keep their day at the *Guil-hall* on the Saturday next enſuing on their peril; and the Names of thoſe which are ſummoned, ſhall be endorſed upon the backſide of the Bill, and then the Plaintiff may ſue to array the Aſſize and ſummon the Jury againſt that Saturday, or againſt other Saturdays after at his pleaſure: And ſo may the Tenants ſue for their deliverance, if they will, and ſuch ſummons ſhall be made the Friday before the Saturday, and the array of the Pannels of the Jurors ſhall be made by the Sheriffs or their Officers,

or by the Mayor and Aldermen, if any of the parties upon reaſonable cauſe will require the ſame. And afterwards the ſame Aſſizes ſhall be pleaded and recorded as elſewhere at the Common-Law: And if a Releaſe bearing date in a foreign County, Baſtardy or other foreign matter, which cannot be tryed within the ſaid City, be pleaded in ſuch Aſſizes, then the Plaintiff may ſue to have the Record brought to the Court of our Lord the King to try the matter there as the caſe doth require; and when the matter ſhall be determined in the King's Court, the Record ſhall be ſent back to the ſaid Sheriffs, and Coroner, or to their Succeſſors, to proceed forward therein according to the cuſtom of the City, in manner as it hath been heretofore uſed. And here we are to take notice, That there hath not been any diſcontinuance in ſuch Aſſizes, neither is there any mention made in the Record of the days between the Aſſize brought, and the day that the Aſſize ſhall be taken, or Judgment given, if it be not for a neceſſary cauſe, or that ſuch Aſſizes be adjourned for ſpecial cauſes: And when the Aſſizes are taken before the Sheriffs and Coroner, as is before ſaid, and Judgment given thereof, then ſhall ſuch Aſſizes being determined, be entred of Record, and afterwards ſhall be carried into the Chamber of the *Guild-hall* to remain there in the Treaſury upon Record. And here note, that no man may enter into any Tenements within the ſaid City by force, nor hold any Tenements by force in diſturbance of the Peace.

Tenant in Tayl of Lands in *London*, deviſed his Lands to his Wife, who is made Executrix and proved the Will in the *Huſtings*, and yet claimed her Free-bench, by alledging that the Cuſtom is, that the Wives in *London* after the death of their Husbands,

bands, had uſed to have the chief Houſe in which the Husband dwelt, to hold for ſo long time as ſhe remained unmarried, as their Freebench, in the name of Dower, into which Houſes the Wives after the death of their Husbands might enter by the Cuſtom, without any other execution of Livery, and ſhewed by Replication in Aſſize that ſhe entred; where the Tenants in Aſſize pleaded a Diſcent in Bar to ſtop the Plaintiff of her Freebench if there were any ſuch Cuſtom: And the Defendant by Rejoynder pleaded that the Plaintiff proved her Husband's Will, and that ſhe was in by force of a Deviſe, and traverſed without that, that ſhe was ſeized as of Freebench; and by the opinion of the Court, the ſame was good without ſhewing that the Wife had ſued forth Execution upon the Will: And afterwards the Iſſue was joyned upon the Bar, that the Defendants were in without wrong or Diſſeiſin; and the Aſſize found the Eſtate in Tayl, and that the Defendants were not ſeized by Diſſeiſin, and the Plaintiff was barred in the Aſſize: And note there, that it is ſaid, that in an Aſſize in *London*, they uſe to ſet down the year and day of the Diſſeiſin, which is contrary to other Aſſizes and Actions real and mixt, 20 *Aſſ.* 4. *Pl.* 16.

Since that real actions have in a manner grown out of uſe by the trying of Titles and recovering poſſeſſions by *Ejectione firmæ*, the ancient cuſtoms and practice of the *Huſtings* are very much declined. However as it now ſtands in uſe, we leave it.

The SHERIFF's *Court in* London.

THe two Sheriffs of *London* do keep each of them a Court of Record within the ſame City by preſcription and Cuſtom, where they hold Plea of Debt for any Sum whatſoever, and of all perſonal Actions; and have belonging unto theſe

Courts two Prisons called the *Compters*, the one scituate in *Woodstreet*, and the other in the *Poultry* at the lower end of *Cheapside*.

They have two Court-days apiece in every week, *viz.* for the *Woodstreet-Compter* on Wednesdays and Fridays, and for the *Poultry-Compter* on Thursdays and Saturdays.

In a Plaint of Debt levied before any of the Sheriffs, the custom is, that the said Sheriffs *ore tenus* send to the Sergeants of the *Compter* to summon or attach the Defendent without Warrant, and upon *Nihil* returned within the City, that then the Sergeants and every of them by the command of the Sheriff have used to attach and arrest the Defendent, to have his body at the next Court before the Sheriff at the *Guild-hall*.

They do certifie their Records in that manner: But the usual practice is to enter an Action in the Office for that purpose at one of the *Compters*, which Action must be carefully entred, for it is as the Original of that Court by which you declare, and from whence there can be no variance, for if the Action and Declaration agree not, a Non-suit follows, and when an Action is entred, then any one of the Sergeants may arrest the Defendent and bring him into custody, until he find Bail to answer the condemnation, which Bail is taken by one of the Clerks sitters at the *Compters*, who constantly attend in that Office *alternis vicibus*.

The Plaintiff ought to declare the first Court after the Defendent is arrested; though further time is usually given *ex gratia Cur. per mot. Attornat. qui, &c.* But if the Plaintiff have no Attorney the first Court, the Defendent may Nonsuit him, if he please. And if the Defendent be in the *Compter*, he is brought to the Bar to plead unto the Plaintiffs Declaration

claration by a *Duci facias*, as they call it, which is but the Sheriffs Mandate made by the Clerk of the Papers.

If the Defendent be a Freeman, he hath four defaults, that is, to appear on the 4*th* Court after Bail entred, ſo that he hath three Defaults excluſive; but theſe Defaults are only allowable in Actions of Debt, Account, or Covenant broken, and in no other caſe.

In *London* the *general Aſſumpſit* differs from other Courts, for in an Action on the caſe upon an *Aſſumpſit* in *Weſtminſter*, or elſewhere, the Defendent cannot wage his Law at all; but here in *London* the *general Aſſumpſit* is more beneficial for the Plaintiff, and differs from other Courts, in that the Plaintiff need not to expreſs any particular conſideration in it, or prove his juſt preciſe demand; but in a Plea of Debt without ſpecialty, the Defendent may wage his Law as well in *London* as in other Courts.

They have in each Court a Steward or Judge who is learned in the Laws, and beſides ſome particular Cuſtoms, the proceedings are in all caſes generally following the preſident of the Common Law at *Weſtminſter*; but of their particular practice take this following account:

The Actions uſually in this Court are either Pleas of Treſpaſs, Treſpaſs on the Caſe, Debt, Account, breach of Covenant. The greateſt difficulty is in the entry of Actions, for the Action as we ſaid before, is the Original, from which there muſt be no variation.

Firſt, Actions of Treſpaſs, which are either for *Aſſaults*, *falſe Impriſonments*, *Domum* or *Clauſum fregit*, coming into another mans Houſe or Yard, for taking away another mans Goods, or for ſpoiling of Goods, or Treſpaſs upon Ejectment for Title of Land.

If an action of Treſpaſs be entred againſt a man and his wife, and the wife only arreſted and bailed, or in priſon, the Plaintiff may proceed againſt the wife, notwithſtanding the husband is not arreſted: and the Bail for the wife is liable to pay the Recovery if the wife abſent her ſelf out of the way.

Secondly, Treſpaſs on the Caſe, either for Words, Book-debts, all *Aſſumpſits* or Promiſſes, all *Quantum meruits*, alſo for rent without Leaſe, or Trover and Converſion.

For words whether actionable or not, *Vide Howel ſur* Actions of Slander, and alſo concerning Awards.

In actions of Trover you muſt prove property, poſſeſſion or converſion (being as one) and demand of the Goods before the Action brought.

If two or three men, or more, buy commodities joyntly together, the Action muſt be entred againſt them all; there you cannot proceed unleſs there be Bail for all the Defendents.

If an Action of the Caſe be entred againſt a man and his wife, you cannot proceed againſt the wife (if bailed) till there be Bail for the Husband.

Note, that if the husband be arreſted upon an Action of the Caſe or Treſpaſs againſt him and his wife, he ſhall be compelled to put in Bail for his wife.

Thirdly, Actions of Debt upon Bond or Bill, upon Leaſe for Rent, upon Judgment or Statute.

If two men be bound joyntly and not ſeverally by Bill to pay ten pounds, you cannot ſue the one without the other, for the Action muſt be joynt againſt both, yet if one die the Survivor ſhall be ſued:

If *A.* be bound to *B.* to pay 100 *l.* at four ſeveral payments by Bill, but not in a penalty, the Bill cannot

cannot be ſued until the laſt payment be expired; but it is otherwiſe upon Bond, for there if *A.* be bound to *B.* by Obligation of 200 *l.* for payment of 100 *l.* at four ſeveral payments, there upon the firſt break or non-payment the Obligation may be ſued; ſo likewiſe a penal Bill.

Note, that the penalty upon a Bond or Bill is not given by the Court; but only the principal intereſt and charges of the Court; unleſs upon Obligations with ſpecial conditions, as Obligations upon Counter-ſecurity or perſormance of Covenants, or the like; unleſs the Defendent plead *Non eſt factum.*

You may declare upon a Judgment either in *Guild-hall*, or any other Court of the like nature: but not upon a Judgment in any ſuperiour Court.

Note, that the Defendent upon an action of Debt hath liberty (if a Freeman) upon his putting in Bail to mark his four defaults, which will coſt four pence more than the Fees of the Bail: ſo that he may chooſe to appear by an Attorney till the 4*th* Court-day after his putting in Bail; If he appear not then, Judgment paſſeth againſt him by Default and Execution in the afternoon.

If the Defendent be a Forreigner and bailed, if he appear not the firſt Court-day by his Attorney, Judgment paſſeth alſo againſt him and his Bail.

The Plaintiffs charge.

TO his Attorney, and for the Declaration and Court, 3 *s.* 10 *d.*

Judgment by Default, 4 *s.* 4 *d.*

The Plaintiff always pays 4 *d.* for not filing his Bond in Court.

Fourthly, Actions upon Account, which are either for receiving of Goods and Merchandizes, and not giving an account thereof, or for receiving of Money, or for both upon one action.

But

But the Bail for the Defendent are not liable to pay the recovery, but that the Defendent ſhall account.

Fifthly, breach of Covenants, either upon Covenant by Indenture, or Covenants by article under Sale, or any other Covenant under Sale.

If a man be bound by Indenture to pay twenty pounds quarterly, and a Covenant alſo for the payment of it quarterly together with a Bond for performance of Covenants: the Leſſor may ſue the Leſſee either upon an action of Debt for his Rent, and ſo declare upon the *Reddendum* or upon the Covenant, upon which he may ſue once upon the Bond, for it can be ſued but once.

If *A.* be Executor or Adminiſtrator, the Action muſt be ſo entred, or if the Executor of an Executor or Adminiſtrator: and ſo alſo againſt the Defendent.

Note, that a man may be an Executor in his own wrong, and may be ſued if he receive and intermeddle with the Eſtate of the Inteſtate.

Or if *A.* be the Aſſignee of *B.* the Action muſt be ſo entred, and ſo againſt *C.* the Aſſignee of *D.*

Note, that if *D.* be the Aſſignee of *C.* and *A.* takes Rent of *D.* and accepts of *D.* as his Tenant, *C.* is then out of fear to be ſued either for non-payment of Rent, or breach of Covenants. Again, if the Rent be 100 *l.* *per annum*, and *D.* finds that the Houſe will not yield 50 *l.* *per annum*, *D.* may aſſign his Right and Intereſt to *John Doe*, and *A.* ſhall not after the Aſſignment ſue *D.* for any more Rent: the reaſon being, that he that admits of one Aſſignee admits of twenty.

An action remains in force ſixteen weeks, and after Bail put in, ſixteen weeks without Declaration, if declared, good a year and a day: if Iſſue joyned

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in force ever afterwards, and the Plaintiff at all times at liberty to proceed to Trial; if Judgment be obtained after a year and a day it must be revived.

The withdrawing an Action of Treſpaſs, or Treſpaſs on the caſe, or Treſpaſs upon ejectment 6 *d.* If Debt, Account, or breach of Covenant 12 *d.* The withdrawing a Declaration 16 *d.* and ſo if at Iſſue or after Summons of the Jury upon the Pannel 16 *d.* If withdrawn by conſent always 4 *d.* more *ex aſſenſu partium*, and the Deſendent cannot have Judgment for charges, otherwiſe he may.

Note, the Plaintiff hath four Court days to declare againſt the Defendent, unleſs the Defendent be a priſoner, if he ſee his Attorney, otherwiſe Nonſuited the firſt.

There is a grand abuſe, when Actions are left ſtanding, and not withdrawn after arreſt, by which means oftentimes a poor priſoner is put to great damage and expence; the Sheriffs withal wronged of their due, to whom the fee for withdrawing belongs: Moſt commonly the parties that injure moſt that way are Sergeants and their Yeomen: As to the priſoner, there being many of one name, as admit *John Green* or any other were arreſted, the Plaintiff and Defendent perhaps agree; the Sergeant demands Money for withdrawing the action which is given him: the Money is purſed up, no action withdrawn, becauſe it is not known whether the Deſendent be arreſted or not. It happens afterwards that another man of the ſame name is arreſted and caſt into the *Compter*, and after ſome ſhort time there happily agrees with his Plaintiff, who withdraws his action, the Deſendent coming to the Clerk of the Papers for his diſcharge, and the Clerk ſearching for ſixteen weeks, finds within that time an action entred

entred againſt him (but in truth not againſt him, but another of the ſame name) and he muſt either give Bail to that, or muſt lie in the *Compter* until the next Court-day for that *Compter*, to nonſuit the Plaintiff before he can be diſcharged, which is a great expence, coſt and charge to the Defendent being a priſoner; and by this means the Sheriffs are injured of their Fee. If this abuſe were well looked into, poor priſoners would not ſuffer ſo deeply as ſometimes they do.

The charge of the Plaintiff to Trial, Judgment, and Execution.

THe action and arreſt, 1 *s.*4 *d.*
The Attorneys Fee, Declaration, and Court, 3 *s.*8 *d.*
The Iſſue, 4 *s.*
The Summons of the Jury, 4 *s.* 8 *d.*
The *Subpœna*, 2 *s.*
The Juries Verdict, 4 *s.* 6 *d.*
The Judgment, 2 *s.*6 *d.*
The Execution, 1 *s.*4 *d.*

But then if the cauſe be brought again from the Mayors Court, there is more which is allowed him for his coſts of the *Remandetur*, 4 *s.*6 *d.*

If you declare upon a Bond, you pay upon the Declaration more, 2 *d.*

And if an Executor or Adminiſtrator, more, 4 *s.* 6 *d.*

If the Jury be a Petty Jury under 40 Marks, then you pay for the Summons, 3 *s.* 8 *d.*
And for the Verdict, 3 *s.*6 *d.*

And for every ſecond, third or fourth Summons, if for a grand Jury, 2 *s.*6 *d.*
If for a petty Jury, 1 *s.*
Sometimes an Execution is, 2 *s.*4 *d.*

After

After Judgment given in Court you may have execution preſently againſt the Body or Goods of the Defendent, and the next day againſt the Bail, which will coſt, 4 *d.*

If you take the Defendent in execution, you cannot afterwards have a *Fieri facias*, againſt the Defendents Goods.

If you take out a *Fieri facias* againſt the Goods of the Defendent, it will coſt, 2 *s.* 4 *d.*

For the executing thereof you are forced to agree with the Sergeant; ſo likewiſe with the Clerk of the Papers: If the Goods in the Inventory appraiſed by two men, do not amount to the Sum in the Judgment, you may afterwards have execution againſt the Body of the Defendent for the remainder, or againſt the Bail.

Note, that if the Bail be in execution in the *Compter*, if the Defendent come and ſubmit his Body, the Bail will be diſcharged, or if any time before they reprieve the Defendent to the action, they are freed. Alſo the Bail may of themſelves carry the Defendent to priſon without an Officer and reprieve him to the Action, paying the Clerk 4 *d.* for marking the reprieve, and ſo diſcharge themſelves.

Every Declaration that is ſpecial you pay 4 *d. per* ſheet for drawing, and 4 *d. per* ſheet ingroſſing, beſides 8 *d.* the Court Fees, and if Counſel 3 *s.* 4 *d.* which is allowed by the Court.

Every Counſel extraordinary, though the Plaintiff pay 10 *s.* or 20 *s.* he ſhall be allowed by the Court but 3 *s.* 4 *d.* to each.

All other charge is loſt, as what you pay to the Quarterman for ſwearing the Witneſſes, which is of curteſie, not due, who is to attend the Court: alſo what you pay above one ſhilling for the Arreſt is not allowed, and alſo what you pay for taking the

the Defendent in execution, or for ſerving the *Fi. fa.* againſt the Goods of the Defendent, and all charges iſſues thereon.

The Plaintiff payeth for continuance of his cauſe after Summons before the Court ſits, but 8 *d.* if afterward his Witneſſes come not, and he moves the Court for a continuance then 4 *s.* 4 *d.* So likewiſe if the Defendent moves to put off a Trial 4 *s.* 4 *d.* which is loſt on both ſides.

Note, that every Carryer and Waggoner hath of courſe his Return-day given him, if deſired by his Attorney. Charge 4 *d.*

If the Plaintiff, after the Defendent hath removed his cauſe, bring down the cauſe again by a *Procedendo*, for want of putting in Bail, his charge thereof he is allowed, and alſo 2 *s.* 8 *d.* for the allowance, and what other charge he is at more in relation to a Trial to his Attorney. An action is uſually tried in four Court-days.

The Defendent's Fees.

IF the Plaintiff appear not the firſt Court-day after Bail to the action by his Attorney, he is nonſuited, (unleſs upon the Defendents marking his four Defaults) and if the Defendent be a priſoner, no Attorney appearing, a Nonſuit without doubt.

The charges then of the Defendent,

Apparance,	2 *s.* 6 *d.*
Nonſuit,	1 *s.* 4 *d.*
Judgment,	2 *s.* 6 *d.*
Execution,	10 *d.*

If the Defendent put in Bail to an Action he pays 16 *d.* but if it be againſt him and his wife 2 *s.* 8 *d.* if there be no ſaving harmleſs upon Record, for if there be there is 4 *d.* more.

The

The Defendent's Fees for a Trial.

Appearance, 2 *s.* 6 *d.*
The Copy of the Declaration *per* ſheet, 4 *d.*
Iſſue, 3 *s.* 8 *d.*

If the Defendent plead ſpecially he pays 4 *d. per* ſheet for his ſpecial Plea, and 4 *d. per* ſheet ingroſſing, 4 *d.* more for his Imparlance (and the Plaintiff the like) and 12 *d.* more upon the Iſſue, and if Councel thereon 3 *s.* 4 *d.* all allowed.

Fee upon Summons, 1 *s.* 8 *d.* if Councel, 3 *s.* 4 *d.*

The Defendent hath two ways of removal, the one by a *Levata Querela* into the Mayor's Court, the other by *Habeas corpus*.

The charge of the *Levata Querela* is 5 *s.* 10 *d.* and for carrying up the Record, as you agree with the Clerk of the Papers,

The Defendent, after the plaint is certified up, may prefer his Bill there in the Mayor's Court, if he hath equity, or afterwards remove it from thence by *Habeas corpus*; but if the Defendent carry not up his plaint in time, the Plaintiff will have a *Remandetur*, and ſo try it in the Sheriffs Court.

If the Defendent bring his *Habeas corpus* to remove it, the charge is,

The Writ, 13 *s.* 7 *d.*
The Allowance, 2 *s.* 4 *d.*
The Return, 2 *s.* 6 *d.*

If any othe actions, 4 *d.* apiece for the Allowance, and 6 *d.* apiece for the Return.

Note, that in all Actions under 4 *l.* 19 *s.* unleſs it be where Trial of Title of Land is concerned, though the Writ be allowed and the plaint returned, the Plaintiffs Attorney may proceed to Trial againſt the Defendent, notwithſtanding the removal and return, and ſhall recover his Debt againſt the Defendent, but his Bail are freed. But it is otherwiſe

therwiſe if the Defendent turns himſelf over to the Kings-Bench or Fleet.

Alſo obſerve, that if there be ſix weeks between the Bail and Iſſue joyning, the Defendent ſhall not remove his plaint by Writ, but ſhall ſtand Trial below.

The Defendent after recovery againſt him by a Jury, may before a Judgment mark his cauſe before the Lord Mayor; Charge 5 *s.* 10 *d.* Then he or ſome other perſon enters into a Recognizance double the Recovery to the Chamber of *London*, to ſtand to ſuch order as the Lord Mayor ſhall make therein.

After ſuch order made by the Lord Mayor, the Defendent pays the Plaintiffs coſts into the Court within fourteen days, and gives ſecurity in the *Compter* by bond to pay the recovery, according to ſuch order, to the Plaintiff: the Plaintiff pays for the bringing down ſuch order, 4 *s.* 6 *d.* which charge is allowed.

The Plaintiff may ſometimes get a *Procedendo ad judicium* out of the Chancery, and ſo prevent the Lord Mayors Order, but it muſt be done before the Lord Mayor make his Order.

The Defendent cannot mark his cauſe before the Lord Mayor, if it be once removed by *Habeas corpus*.

Note, that if a Recovery be obtained on Thurſday, the Defendent muſt be ſure to mark the cauſe before the next Court, elſe Judgment will be entred *ſedente Curia*.

Note, if the Verdict be found for the Defendent, the Court always abateth out of the Defendents coſts 3 *s.* 4 *d.* out of favour to the Plaintiff.

If there be a rule or ſtay of Execution entred upon Record, you always pay 4 *d.*

If a Freeman be arreſted for a Debt under 40 *s.* though he put in Bail after the arreſt, yet if he warn

warn the Plaintiff to the Court of Conscience, though on Bond, that Court will order it and compel the Plaintiff to loose his charge, and stand to their Order.

A Woman that useth a Trade without her Husband, is chargeable without him, as a sole Woman or sole Merchant; yet the Action must be entred against both, and it must lay in the Action thus: *Jane his Wife, who solely merchandiseth without her Husband in the Art or Mystery of Sempesters*, or what other Trade she useth: She shall plead as sole, and shall have and other advantage by way of Plea, and if condemned shall be put in prison till she pay the Debt, the Husband or his Goods in such case shall not be charged nor impeached. The Bail for the woman are lyable to pay the Debt if she absent her self.

If the Defendant be a Prisoner, the Plaintiff may enter his Action against him, see his Attorney, send for him to Court by a *Duc. fac.* and proceed to Tryal: The charge of the *Duc. fac.* is 12 *d.* if an Execution, 2 *s.* 6 *d.* And so if in *Ludgate*, which is a Prison of ease for Freemen in respect of charge, but those costs are all one, and the proceedings as from either *Compter* alike.

A Prisoner's charge in going from the *Compter* to *Ludgate*, which is called his *Horse*, is 16 *d.*

Ministers, commonly called Clerks, have the like Priviledge.

A *Scire post annum*, for reviving a Judgment after a year and a day, will cost usually 12 or 13 shill.

To the Attorney more, 2 *s.* 6 *d.* And Judgment thereon, 2 *s.* 8 *d.*

If an action be entred against a man, and the Plaintiff employs a Sergeant, gives him his Fee, and afterwards arrests the Party and takes his Word, the Plaintiff having feed his Attorney, may give a

warning to the Quarterman, charge thereof 4 *d.* viz. *Warn in* A.B. *Sergeant at Mace, to appear at the next Court, to shew cause why he arrested* N. *and let him go without Bail to the Plaintiffs Action.* If the Officer do not appear on the warning, the Plaintiff may have an Attachment against him, which is delivered to the Quarterman, who by virtue thereof compels him to come in the next Court. And he pays for the Attachment 1 *s.* to the Officer 1 *s.* The Officer appearing, the Court orders him to pay the Fees of the Attachment and Officer, the Plaintiff proving the arrest; then if the Officer desires further day to bring in the Defendent, with the consent of the Plaintiff it is granted; Or the Plaintiff may bring a special Action of the Case against the Officer, but it must be entred against him as Sergeant at Mace, then declare specially, setting forth the Debt, the former Action, and the arrest; which three being proved, they may and do commonly find the Plaintiffs Debt and Damages.

If a Defendent will, he may go on by *Proviso*; and if no Issue, tender an Issue after declaration, and upon the Plaintiffs neglect of Summons of one Court-day after Issue joyned, the Defendent may crave his *Proviso*, (charge 2 *s.*) and so proceed to Trial, and his costs shall be allowed as before all but 3 *s.* 4 *d.* only the Court will allow but 12 *d.* for putting in Bail.

If a man under arrest give any Money to an Officer, it is of curtesie and not of right; and not a penny thereof allowed.

Note, that a Defendent may wage Law to an Action of Debt upon a *Concessit solvere*, unless for Rent.

Note, that if a cause be removed by *Habeas corpus*, and Pledge given for the Defendent before a Judge,

Judge, the Bail are liable to all other declarations given to the Defendent's Attorney the next Term after Bail: And the Defendent's Attorney will be compelled to receive the declarations.

Attachments, properly called Forreign Attachments.

EVery Attachment is made upon a Plaint of Debt, in this manner:

A. oweth *B.* 100 *l.* and *C.* is indebted to *A.* 100 *l.* *B.* entreth an action against *A.* of 200 *l.* and by virtue of that action a Sergeant attacheth 100 *l.* in the hands of *C.* as the Moneys of *A.* to the use of *B.* which is returned upon that action; The return must be betwixt certain hours: for that another Attachment may happily be made after in the hands of *C.* so that *C.* hath no other way to avoid that other Attachment made in his hands, but by pleading the former Attachment made as before.

The Attachment being thus made and returned by the Sergeant the safest and securest way for the Plaintiff is, immediately or before the next Court holden for the same *Compter* to see an Attorney, for although the Attachment be returned and made upon that action of Debt, four Defaults are marked; yet if the Defendent shall come and put in Pledges or Bail to the said Attachment, the Defendent may at the next Court nonsuit the Action and recover charge against the Plaintiff, which if the Plaintiffs Attorney were seed, might be prevented.

Four Court-days must first pass, before the Plaintiff can cause the Garnishee, which is *C.* in whose hands the Money was attached, to shew cause why *B.* should not condemn the 100 *l.* attached in the hands of *C.* as the Moneys of *A.* the Defendent upon the action, (though not in the Attachment for *A.* hath no day in Court) to the use of *B.* the Plaintiff. Then the Garnishee *C.* may appear in Court

by his Attorney, wage Law, or plead that he hath no Money in his hands of the Defendant's, or other ſpecial matter.

The Garniſhees charge, if he wage Law only, is

FOr the Appearance,	2 s. 6 d.
The Wager of Law,	4 s. 8 d.

If the Garniſhee refuſe to wage Law, the Plaintiff may try the cauſe in four Court-days following after the *Scire facias* comes into Court. If the Garniſhee will plead that he hath no Money in the hands of *A.* the charge then of the Plaintiff, and before, is

The Action and Return,	8 d.
The Officer,	1 s.
But if the Garniſhee be not preſent he will have	2 s.
The warning in the Garniſhee,	1 s.
The Appearance by an Attorney,	2 s. 6 d.
The *Scire facias* uſually,	2 s.
The Iſſue,	4 s.
The Summons of the Jury,	4 s. 8 d.
If a *Subpœna*,	2 s.
The Counſel,	3 s. 4 d.
The Verdict of the Jury,	4 s. 6 d.
The Judgment,	2 s. 8 d.

Then the Plaintiff muſt put in Bail or Pledge, that if the Defendant ſhall come within the year and the day next enſuing into the Court, and that he can diſcharge himſelf of the ſaid Moneys ſo condemned in Court, and that he owed nothing unto the Plaintiff at the time in the Plaint mentioned, the ſaid Money ſhall be forth coming, *&c.*

The Plaintiff's Bail,	1 s. 4 d.
Satisfaction upon Record,	1 s. 4 d.

But if the Plaintiff giveth a Note and Warrant to his Attorney, he payeth more,

Two Warrants,	8 d.

The

The Attorney's Fee, 1 s. 8 d.

So likewise if the Plaintiff gives a Warrant to his Attorney for satisfaction upon Record upon an Action, he pays, 2 s. 4 d.

If the Sum attached be under 40 Marks, then he pays but 3 s. 8 d. for the Summons, and 3 s. 6 d. to the Jury.

An Attachment may be made for Goods and Moneys at the same charge (but the Sum must be certain) all upon one Attachment, and both in one *Scire facias*: If for Goods, then a Judgment for an Appriſement (if no appearance by the Garniſhee) the charge, 2 s. Then the Plaintiff proceeds to a Bill of Appriſement, and to charge for ſummoning of the Jury: then he muſt prove the value of the Goods, and Judgment then paſſeth; this coſts 2 s. 8 d. then Bail and ſatisfaction.

Now an Attachment may be made in the Plaintiff's own hands, either of moneys, or goods, or both.

If of Money, then the charge is as followeth:

The Action and Return,	8 d.
The Appearance by an Attorney,	2 s. 6 d.
The *Scire facias*,	2 s.
The *Fiat Executio*,	2 s. 8 d.
The Plaintiff's Bail,	1 s. 4 d.
The Satisfaction,	1 s. 4 d.

Then the Attachment is perfected, ſo that the Defendant can put in no Bail to diſſolve the Attachment.

If the Attachment be made of Goods in the Plaintiff's hands, then the charge is as followeth:

The Action and Return,	8 d.
The Officer,	1 s.
The appearance by Attorney,	2 s. 6 d.
The *Scire facias*,	2 s.
The Judgment for Appriſement,	2 s.

The Bill of Appriſement, 2 s.
The *Fiat executio*, or Judgment, 2 s. 8 d.
The Bail, 1 s. 4 d.
The Satisfaction, 1 s. 4 d.

But the Plaintiff muſt obſerve that after Judgment is given by the Court for the appriſement of the Goods, he muſt bring two Freemen of *London* into the Court the next Court-day following, there to be ſworn, *That they have made an appriſement of the Goods to the beſt of their skill and knowledge*; who put their hands to the appriſement.

An Attachment is never throughly perfected till there be Bail and Satisfaction upon Record; for that Bail may be put in by the Defendent to diſſolve the Attachment; Then all the Plaintiffs charge is loſt, and himſelf never the nearer.

If an Attachment be made of Goods, among which there are ſome Trunks or Boxes locked, it ought to be ſo returned by the Sergeants upon the action: And the Court, the next day after the four Court-days paſt, will grant Judgment for opening: The charge whereof is, 2 s.

If an Attachment be made of Jewels, either in a Mans own hands, or in a third parties hands, it ought to be returned ſo upon Record.

If an Attachment be made of Moneys due upon a Bond or Obligation, the penalty muſt be attached; for the Court afterwards will abridge it to the principal.

The Garniſhee's Fees.

THe Garniſhee (which is the party in whoſe hands the Money is attached) being warned in (after the four Court days are paſt as before) to appear, to ſhew cauſe why the Moneys or Goods attached in his hands ſhall not be condemned in Court to the uſe of the Plaintiff, muſt go to an Attorney in the Court and give him his Fee: Then if he can

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wage his Law, he may be discharged, by swearing he hath no Moneys or Goods in his hands of the parties against whom the Attachment is made, upon the payment of his Fees of 7 *s.* 2 *d.* But if he will plead, he must put in Bail or Pledges before the second Court-day after the *Scire facias* comes in: otherwise for want of Bail put in, he is condemned for the whole Sum: Then Judgment is awarded against him, and he left remediless as to a Trial by a Jury; but if he put in Bail, and plead that he hath no Money or Goods in his hands of the parties against whom the Attachment is made, it will then be tried by a Jury, and he may make his defence.

The Garnishee's charge to a Trial.

THe appearance by Attorney,	2 *s* 6 *d.*
The Bail,	1 *s.* 4 *d.*
Copy of the *Scire facias*,	1 *s.*
The Issue,	4 *s.* 8 *d.*
The Attorneys Fee at Trial,	1 *s.* 8 *d.*
The Counsel (if any)	3 *s.* 4 *d.*

The Garnishee after Trial may put in bail in the absence of the party against whom the Attachment is made before the Lord Mayor, and so dissolve the Attachment and all the proceedings thereon; but then he and his Security are liable to what Debt the Plaintiff shall make appear to be due from the Defendent; wherein the proceedings are upon action and the Fee alike.

The charge of putting in Bail before the Lord Mayor, will be about 6 *s.* 8 *d.*

The party against whom the Attachment is made may put in bail at the *Compter*, charge 2 *s.* 8 *d.* or submit his body, and thereby dissolve the Attachment, which he may do or the Garnishee at any time before Satisfaction acknowledged upon Record by the Plaintiff.

All charges upon an Attachment are loſt on the Garniſhee's and Plaintiff's part.

If the Garniſhee fail to appear by his Attorney, being warned in by the Officer at the next Court to ſhew cauſe as is aforeſaid, he is taken by Default for want of appearing, and Judgment given againſt him for the Goods and Moneys attached in his hands, and he is remedileſs either at the common-Law or in Equity, by reaſon of his Non-appearance, although he hath not one penny in his hands, and if taken in Execution muſt pay the Money, or go to priſon: then he may put in Bail for the Defendant, which are lyable to what the Defendant ows to the Plaintiff, unleſs they can reprieve or bring forth the body of the Defendant to the Action.

If the Money be Attached in the Garniſhee's hand upon a Bond or other Contract under Seal, where the Money is not become due at the day therein mentioned, the Garniſhee may by his Attorney put in his Plea and ſet forth that the day of payment is not come, and the Court will give him this day of payment accordingly.

If Goods be attached in the Garniſhee's hands, and he hath a Bill of Sale of the Goods, he may plead it in Court and ſo acquit himſelf.

If an Attachment be made of a Horſe, Mare, Nag or Gelding, the Attachment muſt ſo be returned, and if the Plaintiff prove either it is good: Otherwiſe if an Attachment be made of an Horſe and it proves to be a Mare, the Attachment will be avoided.

If an Attachment be made of a Horſe or a Mare in an Inn-keeper's hands, he appearing by his Attorney, may put in his Plea, ſetting forth that there is ſo much Horſe-meat due, and the Court will allow him his Money before the Plaintiff ſhall have Judgment for the appriſement of the Horſe or Mare.

No

No Attachment lyes of Rent.

Attachments remain in force as actions; yet when an Attachment is well near expired of the sixteen weeks, the Plaintiff may move by his Attorney for the continuance of the Attachment for 16 weeks longer, and it will be granted by a Rule in Court, which will cost 2 *s.* 4 *d.* Then if the Garnishee happen to come into the City after the former 16 weeks expired, and within the next 16 weeks by the rule obtained, the Plaintiff may cause a Sergeant to warn the Garnishee to shew cause as before, and the Garnishee shall be compelled to plead as before. The Plaintiff must cause the Rolls to be brought into Court, which costs 1 *s.* 4 *d.* and 2 *s.* 6 *d.* his Attorney, the other fees as before.

If the Money or Goods of a prisoner, either in the King's Bench or *Fleet* be attached in the Sheriff's Court, the prisoner may come from that prison and submit his body to prison to the Action, and so dissolve the Attachment, and bring his *Habeas corpus* and go up in person before a Judge, and be turned over to the said prison where he formerly was a prisoner, but it must be done before Satisfaction.

To hinder the Garnishee's waging his Law.

After the Plaintiff hath appeared by his Attorney and put into the Court his *Scire facias*, then if the Plaintiff hath two good, sufficient, and lawful Citizens of *London*, that can swear, either by the Garnishee's own confession, or of their knowledge, that the Garnishee hath either Money or Goods in his hands of the parties against whom the Attachment is made, at the time of the Attachments making, or since, he may prevent the wages of Law: to which purpose he must get those two Freemen, to make two *Affidavits* before the Lord Mayor drawn

drawn up to that effect and file them by his Attorney to a plea commonly called an *Eſtoppel*, and bring the plea with the *Affidavits* annext, and offer them in Court; which will be accepted. Then the Garniſhee is hindred of waging his Law, and the Plaintiff at liberty to go on to Trial by a Jury.

The charge of the *Affidavits*, 6 *s.* 8 *d.*

The Plea, 7 *s.*

The Garniſhee may either levate his cauſe into the Mayor's Court by a *Levata Querela*, charge 5 *s.* 10 *d.* Then he muſt agree for the certifying the Cauſe up as before upon an action, or elſe he may bring a *Certiorari*, and remove it into the King's Bench or other ſuperiour Court, and there put in bail for the Defendent.

An Attachment may be avoided by filing an Original againſt the party upon the Attachment; ſo that it be filed before the date of the plaint.

After ſatisfaction upon Record, and when the Money is fully condemned by the Plaintiff, the party againſt whom the action is, and whoſe Goods are attached, may come and put in bail *ad diſprobandum Debitum*, the charge whereof is for the bail 2 *s.* 8 *d.* The appearance 2 *s.* 6 *d.*

Then he muſt put into the Court his *Scire facias*, 13 *s.* But it muſt be within the year and day next enſuing after ſatisfaction.

Bail being put in, the Defendent may give a Rule by his Attorney for the Plaintiff to declare; and if he declare not, he ſhall be nonſuited, and the Moneys given again to the Defendent.

If the Plaintiff declares, and the Defendent can diſcharge and juſtifie himſelf by the Law, that he owed nothing to the Plaintiff at the time of the plaint mentioned, then the Defendent ſhall have reſtitution of all ſuch Goods and Chattels ſo taken, or

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of the value thereof, and of the Moneys which the party hath received by the Attachment: ſo likewiſe he ſhall have reſtitution of parcel of the Debt, if the Defendent can diſcharge himſelf, although he cannot diſcharge himſelf of the whole; and if the party that made ſuch Attachment and had execution be not ſufficient, then his Pledges ſhall be charged.

If a man die *inteſtate*, an Attachment may be made of Moneys, or Goods, or both, in a third parties hands: but then the Attachment muſt be entred againſt the Lord Biſhop of *London*, reciting his Name. But when there is a Will proved, or Letters of Adminiſtration granted, the Attachment dies, and it muſt be again made againſt ſuch Executor or Adminiſtrator, unleſs it be condemned fully in the *Interim*.

Note, that when a Defendent hath put in bail upon the Attachment, and ſo diſſolved it, he may have a Note from the Clerk, directed to the Garniſhee in whoſe hands the Moneys or Goods were attached, certifying him, that the Attachment made in his hands is diſſolved by the Defendents putting in bail; ſo that then he may ſafely deliver the Goods or pay the Moneys to the Defendent.

Touching Sequeſtrations.

A Sequeſtration is made upon an action of Debt, an Attachment, and the charge is much alike. The courſe of proceeding is this;

The action being entred the Officers or Officer goes to the Houſe, Shop, or Warehouſe, when there is no body with, then takes a Padlock and hangs it upon the Door of the Houſe, Shop, or Warehouſe, uſing theſe or the like words: *I do ſequeſter this Houſe, Shop, &c. and the Goods and Merchandizes therein of the Defendent upon the Action, to the uſe of*

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the Plaintiff. And ſo puts on his Seal, and makes return thereof at the *Compter* upon the Action. Four Court-days being paſt, the next Court after the Plaintiff may have Judgment to open the Doors and to appriſe the Goods by a Sergeant, who takes a Bill of Appriſement of the Goods and Merchandizes therein, having two Freemen to appriſe them to the beſt of their skill and knowledge, of which they are to be ſworn at the next Court holden at *Guild-hall* for that *Compter*: Then the Officer putteth his hand to the Bill of appriſement, and the Court granteth Judgment as upon an Attachment.

The Defendant upon the Action may put in Bail before ſatisfaction, as upon an Attachment, and ſo diſſolve the Sequeſtration, or after ſatisfaction put in Bail *ad diſprobandum Debitum*.

The Proceedings after Bail alike as upon Attachment.

The Charge of a Sequeſtration for the Plaintiff.

THe Action and Return, 8 d.
The Officer for making the Sequeſtration, 2 s.
The Padlock,
The Appearance, 2 s. 6 d.
The *Scire facias*, 2 s.
The Judgment for opening, and the appriſement, 2 s. 4 d.
The Officer for going to break open the door, 2 s.
The Bill of appriſement, 2 s. 6. d. Sometimes more.
The Officer's hand, 1 s.
The *Fiat executio* or Judgment, 2 s. 8 d.
The Bail, 1 s. 4 d.
The Satisfaction, 1 s. 4. d.

That an Executor or Adminiſtrator may be adviſed how to diſpoſe of the Teſtator's or Inteſtate's Eſtate, he or ſhe muſt pay all things in their kind.

1. He

1. He must be careful to find out what Judgments were against the Testator or Intestate in his life-time for that Judgments ought and must first be paid.

2. What Bonds and Bills being both specialties, are under the Testator's or Intestate's hand, because they must be next satisfied and paid.

3. What Book-debts are due and owing, for these may be paid *ad libitum*.

4. And in the last place pay Legacies.

For if an Executor or Administrator shall pay Bonds or Bills before a Judgment, it is paid in his or her own wrong: and so likewise if they pay Book-Debts before Bonds or Bills.

It is the fear of many to administer especially of Widows: yet without doubt it is the best and safest way; and the Widow may advantage her self thereby, so that she observe to pay all things in their time, as is before set forth.

If she be certain that there is no Judgment against her Husband in his life-time, then let her confess a Judgment upon one Bond or more, that shall amount with the penalties to the value of the whole Estate, and that Judgment shall bar all other Bonds or Bills, and Book-debts whatsoever. And there is no danger in becoming Pledge or Bail for a Widow upon any Action, upon such Bond or Debt brought against her.

The Charge in confessing a Judgment.

THe Action and Bail, 2 s.
The Declaration, Attorney, and Court, 4 s. 4 d.
The Judgment, 4 s. 4 d.
The Attorney to confess the Judgment, 2 s.
The Warrant, 4 d.

If a Judgment be pleaded in *Guild-hall* she shall recover her charge against the Plaintiff, if the Judgment be confessed in that Court. And as

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to priorities of Judgments, there is no ſuch thing, for firſt come, firſt paid; for he that hath the laſt Judgment, if he levy the Goods in execution firſt, he ſhall be paid and the reſt laid aſide, unleſs there be an overplus of the Goods, amounting to more than the ſum contained in the Judgment. And thus much for the Sheriffs Court.

The LORD MAYORS COURT.

ON the Lord Mayors ſide is held both a Court of Law and Equity; for there are proceedings at Law by action and arreſt of the body, or elſe by the attachment of the Defendents Goods, and the proceedings in that caſe are much like thoſe in the Sheriffs Court.

There is alſo a Court of Chancery of Equity held before the Lord Mayor, wherein they do proceed by Engliſh-bill, Anſwer, Replication, and Rejoynder, much like the proceedings in the High Court of Chancery.

This Court is held Mondays, Tueſdays, and every day in the week, if the Lord Mayor pleaſe to ſit.

There is a Practice called, Marking of a cauſe before the Lord Mayor, which is thus: After a Verdict given for the Plaintiff in the Sheriffs Court, the Defendent gets the cauſe marked before the Lord Mayor: which is done by one of the Clerks in the Lord Mayors Court, and is like an Injunction in Chancery to ſtay Judgment and Execution until the matter be examined in Equity; where the Lord Mayor doth oftentimes, if cauſe be, mitigate the Damages, or give the Defendent time to pay it.

The Cuſtom of *London* is, that if a plaint of Debt be entred in the Sheriffs Court, upon ſuggeſtion of any of the parties, the Mayor may ſend for both of them, and examine them upon the truth of the matter before Judgment, and if he find that the party

is

is satisfied, that of so much he may bar him, but not after Judgment, 10 *H.*6.14,15.

Where he in the Reversion upon a Lease for years is impleaded of Lands in *London*, and makes no Default, the Mayor is to enquire by Neighbours in the presence of the Termor or Demandant, whether the Plea be moved by a good Right, or by fraud, to make the Termor lose his Term. And if it be found upon a good Right, the Demandant shall have Judgment presently, and if not, the Termor shall have his Term, and the execution of the Judgment shall be so suspended, *Stat. Glouc. chap.* 11. *Deceit.*

The COURT of ORPHANS in the City of London.

BY the Custom of the City of *London*, the Mayor and Aldermen of the same City shall have the custody of all Orphans within the said City, and they may commit the custody of such Orphans to other Guardians; And if an Orphan be taken away from any other man to whose custody was committed, he shall have a Writ, called a Writ of Ravishment of Ward: so that in this case, this Court doth in some manner resemble the late Court of Wards.

Likewise the Lord Mayor and Chamberlain of the City of *London* for the time being, shall have the keeping of all the Lands and Goods of Orphans within the City: saving to the King, and other Lords, their Rights of such as hold of them out of the same Liberty.

Executors and Administrators are to exhibit true Inventories before the Lord Mayor and Aldermen, and give security to the Chamberlain for the time being by Recognizance, and if they shall refuse so to do, the Court may commit them to prison till they do it. And all such Recognizances or Bonds made

made to the Chamberlain concerning Orphans, ſhall go to him and his Succeſſors, the Chamberlain of the City being a ſole Corporation for Orphans.

If the Eccleſiaſtical Court doth impugn the Court of Orphans, or if they intrude into this Court, a Prohibition lyes out of this Court: Or if any Orphan ſue in the Eccleſiaſtical Court, or elſewhere, for a Legacy or any duty due unto them, the Court of Orphans may by the Cuſtom grant a Prohibition, *Co. Inſt. 4. part. pag.* 49.

Alſo by the Cuſtom of *London*, if a Father advance any of his Children with any part of his Goods, that ſhall bar them to demand any farther unleſs the Father under his hand, or in his laſt Will and Teſtament doth declare, that it was but in part of advancement; and then that Child ſo partly advanced, ſhall put his part in *Hotchpot* with the Executors and Widow, and have a full third part of the whole; accounting that which was formerly given him as part thereof: This the Civil Law calls *Collatio bonorum.*

The Widow of a Freeman of *London* dwelling in *Middleſex*, bequeathed a Legacy of a 1000 *l.* unto her Daughter after all Debts paid, and upon condition that ſhe ſhould not marry without the aſſent of her Executor, and maketh a Freeman her Executor, and dyeth. The Executor is convented before the Court of Mayor and Aldermen, and required to put in Sureties to the Chamberlain of *London* according to the Cuſtom, for the payment of a thouſand pound, according to the time limited by the Will, and according to the Will aforeſaid. The Executor denyeth to find Sureties, whereupon he was committed to priſon, and a *Habeas corpus* being awarded out of the Court of King's Bench to have the Body of the Executor together with the

the cauſe. All this matter appeareth upon the Return, and it was moved by the Recorder of *London* that the Return was inſufficient, and ſo the Executor ought to be enlarged: But the Court held, that the cuſtom of *London* appeareth by the Return to be, that he ſhould find Sureties for the performance of the Legacies according unto the Law of the Land, and the Will of the Teſtator: So as if the Executor had not ſufficient to pay Debts and Legacies, he hath the ſame power and liberty after ſuch time as he hath found Sureties as he had before.

2. The Wife of a Freeman having the Liberty and Priviledge to trade in the City, and conſequently able to take benefit by it, ſhe ſhall alſo be bound by the Cuſtoms of it.

3. And though ſhe was dwelling out of *London* at the time of the Will made, ſhe is a Freeman within the compaſs of the Cuſtom. Which is daily put in uſe.

Of Several other

COURTS,

CUSTOMES and FRANCHISES OF LONDON.

The Court of Common-Council.

THis Court is held by the Lord Mayor, Aldermen, and Commonalty, and hath ſome reſemblance of the High Court of Parliament, for it conſiſts of two Houſes; the Lord Mayor and Aldermen conſtituting the Upper-Houſe, and ſuch as are choſen in every

Ward out of the Commonalty make up the Lower-houſe, and repreſent the whole Commonalty of *London*. In this Court they make Conſtitutions and Laws for the advance of Trade and Traffick, and for the better Government of the City, and for the better executing the Laws and Statutes of the Realm, or *pro bono publico*: So as theſe Laws be not contrary to the Laws and Statutes of the Realm. And theſe Acts being made by the Lord Mayor Aldermen, and Common-Councel, do bind within the City and the Liberties thereof. They of the Commonalty do give their aſſent by holding up their hands.

The Court of the Wardmote Inqueſt.

THis reſembles Country Leetes, every Ward being as a Hundred, and the Pariſhes as Towns: And in every Ward there is an Inqueſt of twelve or more, ſworn every year to inquire of, and preſent Nuſances and other Offences, by not paving or otherwiſe within the Streets and Lanes of the City.

The Court of Halmote.

THis is derived from *Hall* and *mote*, and is as much as to ſay the Hall-Court, that is, *Conventus Civium in Aulam publicam*, every Company of *London* having a Hall, wherein they keep their Court; And this Court was anciently called the *Halmote* or *Folkemote*.

The Chamberlain's Court for Apprentices.

IN this Court concerning the making free of Apprentices before the Chamberlain, all Indentures of Apprentices are or ought to be enrolled, and if he be not enrolled, he may refuſe to ſerve, and may ſue out his Indenture in this Court at his pleaſure, and be diſcharged from his Maſter. The Chamberlain is the Judge here in all Complaints, either of the Servant againſt the Maſter, or the Maſter againſt the Servant, and puniſheth the Offenders at his diſcretion.

cretion. In this Court are made free all Apprentices. Now one may be free of *London* three several ways, *viz.* 1. By Service, as in case of Apprentices bound. 2. By Birth-right, as being the Son of a Freeman, and that is called Freedom by his Father's Copy; Or 3. by Redemption, by order of the Court of Aldermen.

The Court of the Conservator of the Water and River of Thames.

THe Lord Mayor of *London* for the time being hath the conservation and rule of the Water and River of the *Thames* and the Issues, Breaches and Lands overflown from *Stanes*-bridge unto the Waters of *Yendal* and *Medway*, and hath authority to punish such as use unlawful Nets and other unlawful Engines in Fishing, or that take Fish under size or unseasonably, 4 *H.* 7. *cap.* 15. And in all Commissions touching the Water of *Ley* the Mayor of *London* shall be one, 3 *Jac. cap.* 14.

The Court of the Coroner of London.

THe Mayor is Coroner within the City, and the Court of the Coroner is holden before him or his Deputy. See *Co.* 4. *Inst. cap.* of the Coroner.

The Court of the Escheator in London.

THe Lord Mayor is also Escheator within the said City, and this Court is holden before him or his Deputy. See *Co.* 4. *Inst. cap.* of the Escheator.

The Court of Polices and of Assurances in London.

THis Court sitteth by force of the Commission under the Great Seal warranted by Act of Parliament, 43 *Eliz. cap.* 12. there being an Officer or Clerk to register Assurances; the Jurisdiction of which Court you may read in that Act made to encourage Merchants to trade and Traffick, the benefit whereof appeareth there, and is too long

to be here recited, and the rather because we can add nothing to that Act.

The Court of the Tower in London.

THis Court is holden within the *Verge* of *London* before the Steward there by prescription, for Debt, Trespass, and other Actions of any sum greater or lesser, whereof you may read in 4 *E.* 4. *fol.* 36. *a. b.*

Of the Jurisdiction and Authority of the President, Censors, and Commonalty of the Colledge of Physicians in London, *and within seven miles compass.*

OF this Colledge and of their Jurisdiction and Authority, you have very good reading in *Co.* 8. *Rep.* Dr. *Bonham*'s Case, to which I refer you; only I will add, that if one that is of the Mystery of a Physician, take a man in cure, and giveth him such Physick, as within three days he dye thereof, without any felonious intent and against his Will, it is no Homicide. But *Britton cap.* 5. *de Homicidio*, saith, That if one that is not of the Mystery of a Physician or Chirurgeon, take upon him the cure of a man, and he dyeth of the Potion or Medicine, this is (saith he) covert Felony.

And thus much shall suffice to have been said touching the City of *London*, its Customs, and the several Courts held therein. We will give you a short prospect only of the Court of Admiralty, and some Ecclesiastical Courts, used and sitting within the said City.

OF

OF THE COURT OF THE ADMIRALTY.

THIS Court is holden at the Doctors Commons in *London*, and is for the decision of Maritime Causes, that is, things done *super altum Mare*. And it is supposed, that this Court was not put out of the King's House and given over to the charge of the Admiral, till the time of *Edward* III. who was much busied with affairs beyond the Sea, by reason of his Wars in *France*, and the intercourse of Trade and Merchandize which then flourished: And because there is no mention made of this Court before the second year of *Richard* the II. who in the thirteenth year after his coming to the Crown, by Act of Parliament restrained the Authority of this Court, having exceeded its known limits.

By the Statute of 13 *R.* 2. *cap.* It is enacted that the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of *England*, but only with things done upon the Sea, according to that which hath been duly used, in the time of the Noble King *Edward*, Grandfather of King *Richard* the II. By which it is manifest, that the Court of Admiralty hath Jurisdiction only in things done upon the Sea.

By the Statute of 15 *R.* 2. *cap.* 3. It is enacted that the Court of the Admiral hath no manner of

Power, Conuſance or Juriſdiction of any manner of Contract, Plea or Quarrel, nor of other thing done or riſing within the Bodies of the Counties either by Land or by Water, and alſo of Wreck of the Sea: But all ſuch manner of Pleas, Quarrels and Contracts, and all other things riſing within the Bodies of the Counties as well by Land as by Water, as is aforeſaid, and alſo Wreck of the Sea ſhall be tryed, diſcuſſed, determined and remedied by the Laws of the Land, and not before the Admiral nor his Lieutenant in no manner. Nevertheleſs of the death of a man, and of a *Mayhem* done in great Ships, being and hovering in the main Stream of great Rivers, only beneath the points of the ſame Rivers, and in no other place of the ſame Rivers, the Admiral ſhall have Conuſance. Here note, the Admiral hath a greater Juriſdiction in caſe of the death of a man of a *Mayhem*, than in other caſes; for in all other caſes happening within the *Thames*, or any other River, Port, or Water, which are in any County of the Realm (as all Rivers and Havens be) the Admiral or his Deputy have no Juriſdiction.

The Statute 27 *E. cap.* 11. likewiſe limits the Juriſdiction of the Admiralty, *viz.* All and every ſuch of the ſaid offences, before mentioned, as hereafter ſhall be done on the main Sea or Coaſts of the Sea, being no part of the body of any County of this Realm, and without the precinct, Juriſdiction and Liberty of the Cinque Ports, and out of any Haven or Pier, ſhall be tryed before the Lord Admiral.

If Goods be taken from an Engliſhman in *Spain* beyond the Sea, and the party cannot obtain Juſtice there, he ſhall have a Writ to the Sheriff to arreſt the Body of the Offender, and to ſeize his Goods to the value. *Orig. fol.* 129. *F. N. B.* 114. So that where

where the party can have remedy at common-Law, the Admiral cannot hold Plea.

If a Charter-party, or any other Contract, be made without any City, Town or County of the Realm, though the performance thereof to be done and performed upon the High Sea, yet the Admiral hath no Jurisdiction, because it may be tryed at the Common-Law: But where the whole is to be done *super altum Mare*, and no part of it *infra corpus Comitatus*: there the Admiral hath Jurisdiction, for causes of Actions which are transitorily done out of the Realm, an Action may lye at the Common-Law: But if the things done beyond the Sea be criminal and local, then is it tryable before the Constable and Marshal only.

It is no part of the Sea where a man may see what is done of the one side and of the other: That the Coroner shall exercise his Office in this case, and of this the Country may have knowledge, 8 *E.* 2. *Tit. Coron.* 399.

If one be killed upon any arm of the Sea where a man may see the Land on the one side and the other, the Coroner shall inquire of this and not the Admiral, because the Country may take Conusance of it, *Stamf. Pl. Cor. lib.* 1. *fol.* 51. 8.

An Action of Trespass was brought against certain persons for taking of a Ship in the Haven of *Hull*; the Mayor and Bayliff of *Hull* demanded Conusance by the Kings Charter granted to them, That the Citizens and Burgesses of *Hull* should not be impleaded *alibi de aliquibus transgressionibus & contractibus infra Burgum*, &c. *quam infra Burgum* elsewhere of any Trespasses, Covenants and Contracts within the Borough, *&c.* than within the Borough, and the Conusance was granted: by which it appears that the Haven of *Hull*, where the Ship did ride,

was *infra Burgum de* Hull, and *infra corpus Comitatus*, and determinable at the Common-Law, and not in the Court of Admiralty, 46 *E.* 3. *Tit. Conuſans* 36.

A Charterparty by Deed indented, was made at *T.* in the County of *N.* between *E. O.* of the one party and *H. G.* of the other part, by the which *C.* did covenant with *G.* that a certain Ship ſhould ſail with Merchandizes and Goods of *H. G.* to *M.* in *Spain*, and there ſhould remain by certain days, *&c.* upon the breach of which Covenant, *G.* brought an action of Debt of 500 *l.* upon a clauſe in the ſame Charter, and alledged the breach of the Covenant, for that the Ship did not remain at *M.* in *Spain* by ſo many days as were limited by the Covenant, whereupon Iſſue was taken and tryed, and found for the Plaintiff, and in arreſt of Judgment it was ſhewed, that this Iſſue did ariſe out of a place totally and utterly in a Foreign Kingdom out of the Realm, from whence no Jury of Twelve men could come, and therefore the Tryal was inſufficient: But it was adjudged that the Plaintiff ſhould recover 500 *l.* beſides his Damages, for that the Charterparty whereupon the action is brought, was made at *T.* within this Realm, and that the Tryal being in the ſame place where the action was brought was ſufficient, *Paſch.* 28. *Eliz. in B. R.*

So that where part of the Contract or other thing is made in any place within any of the Counties of this Realm, though the performance thereof be in another place, or *ſuper altum Mare*, yet the Tryal and determination of the whole belongeth to the Common-Law, and is not within the Juriſdiction of the Admiralty.

OF ECCLESIASTICAL OR SPIRITUAL COURTS.

THESE Courts were anciently called *Halymots*, that is, *Holy-Courts*, *Cire-gemots*, or *Chire-gemots*. They are many in number, and different in nature: The greateſt and higheſt of them is called *The Convocation*, in which all the Archbiſhops, Biſhops, and the whole Clergy of both the Provinces of *Canterbury* and *York* are either preſent in perſon or by repreſentation: And they only ſit in Parliament-time, and conſiſt of two Houſes, the upper-houſe where the Archbiſhops and Biſhops ſit, and the Lower where the reſt of the inferious Clergy ſit, 24 *H.* 8. *cap.* 12. 13 *Eliz. cap.* 12.

The Clergy was never aſſembled or called together at a Convocation, but by the King's Writ. *Adjutoria Regis*, as *Beda* ſaith; Their Juriſdiction is to deal with Hereſies, Schiſms, and other meerly Spiritual and Eccleſiaſtical cauſes, and therein they did proceed *juxta Legem Divinam & Canones Sanctæ Eccleſiæ.*

As there be two Houſes of Convocation, ſo are there two Prolocutors; one of the Higher Houſe, choſen by the Biſhops, and another of the Lower, choſen by that Houſe and preſented to the Biſhops for their approbation.

The Clerk of the Convocation, called by the King's Writ, and their Servants and Familiars ſhall have ſuch Priviledge in coming, tarrying and going,

as

as the Peers and Commonalty of the Realm, being called by the King to the Parliament.

The next are the two Provincial Synods of *Canterbury* and *York*, the latter of which hath under it the Biſhops of *Durham*, *Carliſle*, and *Cheſter* in *England*, and the Biſhop of *Sodor* in the Iſle of *Man*; all the reſt owing their obedience to the See of *Canterbury*.

There was heretofore a High-Commiſſion-Court, but that is diſſolved by Act of Parliament, 17 *Car.* 1. and 12 *Car.* 2. But you may at large read its Juriſdiction in *Co.* 4. *Inſt. cap.* 74. *fol.* 324.

The Prerogative Court of the Archbiſhop of Canterbury.

THis is the Court wherein all Teſtaments and Wills be proved and all Adminiſtrations granted, where the party dying within his Province hath *Bona notabilia*, in ſome other Dioceſs than that where he dyeth, which regularly is to be to the value of 5 *l.* but in the Dioceſs of *London* it is 10 *l.* by compoſition.

The Probate of every Biſhop's Teſtament or granting Adminiſtration of his Goods, although he hath not Goods but within his own Juriſdiction, doth belong to the Archbiſhop.

The like Court the Archbiſhop of *York* hath.

From this Court the Appeal is to the King in Chancery. Now touching the Juriſdiction of this Court, many things are neceſſary to be remembred, both for the ſafety of the Judge and the benefit of the party intereſted.

If a man dye inteſtate having *Bona notabilia* in divers Dioceſſes, the Judge of this Court hath uſed to aſſeſs a convenient Sum to be employed *in Pios uſus* under certain limitations. But the Judge ought not directly or indirectly to take any thing thereof

to

to himſelf or his own uſe, nor for the Aſſeſsment thereof or entring the publick Act; and if he doth, it is extortion: and ſo it was adjudged in the caſe of Sr. *John Bennet*, Judge of this Court, *Mich.* 20. *Jac. R.* in the Star-Chamber.

There was an Act made 21 *H.* 8. *cap.* 5. concerning Fees for probate of Wills and Teſtaments, and granting of Adminiſtrations. See *James Rouſe*'s caſe, *Mich.* 6. *Jac. Rot.* 1301. *in C. B.* in an Information grounded on this Act.

The Court of the Arches of the Archbiſhop of Canterbury.

THis Court is called *Curia de Arcubus*, and hath been anciently holden in *Bow-church* London.

The Judge of this Court is called the Dean of the Arches, unto whoſe Officialty in ſpiritual cauſes to the Archbiſhop of *Canterbury* is annexed the Juriſdiction of 13 Pariſhes in *London*: He hath ordinary Juriſdiction in Spiritual cauſes of the firſt inſtance, and by appeal through the whole Province of *Canterbury*, as appeareth by the Statute 24 *H.* 8. *cap.* 12. His Power to call any perſon for any cauſe out of any part of his Province in the Dioceſs of any other, unleſs it be upon Appeal, is reſtrained by the Statute of 21 *H.* 8. *cap.* 9. This Court in the Statute of 25 *H.* 8. *cap.* 19. is called the Court of the Arches: and from this Court the Appeal is to the King in Chancery by the ſaid Act of 25 *H.* 8.

The Court of Audience.

THis Court is kept by the Archbiſhop in his Palace, and meddleth not with any matter between party and party of contentious Juriſdiction, but dealeth with matters *pro forma*, as confirmations of Biſhops, Elections, Conſecrations, and the like, and with matter of voluntary Juriſdiction, as the granting of the Guardianſhip of the Spiritualties

ties *Sede vacante* of the Bishops admission and institution to Benefices, dispensing with Banes of Matrimony, and such like.

The Court of the Faculties.

THis is also a Court, though it holdeth no Plea of controversie: It belongeth to the Archbishop, and his Officer is called *Magister ad facultates*, and his power is to grant Dispensations, as to marry, to eat flesh on days prohibited (and so may every Diocesan) the Son to succeed the Father in his Benefice, one to have two or more Benefices incompatible, *&c.* It is called *Faculties* in the Statute of 28 *H.* 8. which in one sence signifieth a Dispensation.

This Authority was raised and given to the Archbishop of *Canterbury* by the Statute of 25 *H.* 8. *cap.* 21. whereby authority is given to the Archbishop and his Successors to grant *Dispensations*, *Faculties*, &c. by himself or his sufficient and substantial Commissary or Deputy for any such matter, whereof heretofore, such *Dispensations*, *Faculties*, &c then hath been accustomed to be had at the See of *Rome*, or by authority thereof.

The Consistory Courts of the Archbishops and Bishops.

THe Consistory Court of every Archbishop and Bishop of every Dioces in Ecclesiastical causes is holden before his Chancellor in his Cathedral Church, or before his Commissary in places of the Dioces far remote and distant from the Bishop's Consistory, so as the Chancellor cannot call them to the Consistory without great travel and vexation, and he is called *Commissarius foraneus*: From these the Appeal is to the Archbishop of either Province respectively.

The

The Court of the Archdeacon, or his Commissary.

THis Court is to be holden where and in what places the Archdeacon, either by prescription or composition hath Jurisdiction in Spiritual causes within his Archdeaconry: And from him the Appeal is to the Diocesan. He is called *Oculus Episcopi*.

The Court of the Delegates.

IT is so vulgarly called, because these Judges do sit by force of the King's Commission under the Great Seal upon an Appeal to the King in the Court of Chancery, in three causes: First, when a Sentence is given in any Ecclesiastical cause, by the Archbishop or his Official: Secondly, when any Sentence is given in any Ecclesiastical causes in places exempt; Thirdly, when a Sentence is given in the Admiral-Court in Suits Civil and Marine by order of the Civil Law. And these Commissioners are called *Delegates*, because they are delegated by the King's Commission for these purposes.

And here we will say one word only concerning Appeals, whereof this Court is the ultimate Judge.

First, in cases Testamentary, Matrimony and Tythes the Appeal is made from the Archdeacon or his Official, if the matter be there commenced, to the Bishop of the Diocess, and from the Bishops Diocesan or his Commissary in such case, or if the matter be there commenced within fifteen days after Sentence given to the Archbishop of the Province and no further.

From the Archdeacon or Commissary of the Archbishop, if the matter be there commenced within 15 days, *&c.* to the Audience or the Arches of the

the Archbiſhop; and from thence within other fifteen days, &c. to the Archbiſhop himſelf, and no further. And if the caſe be commenced before the Archbiſhop, then to be there definitively determined without further appeal.

Where the matter toucheth the King, the appeal within fifteen days to be made to the Higher Convocation-Houſe of that Province, and no further, but finally to be there determined.

A general clauſe, that all manner of appeals, what matter ſoever they concern, ſhall be made in ſuch manner, form and condition within the Realm, as is ordered by 24 *H.* 8. *cap.* 12. And one further degree in appeals for all manner of cauſes is given, *viz.* from the Archbiſhop's Court to the King in Chancery, where a Commiſſion ſhall be awarded for the determination of the ſaid appeal, and from thence no further.

Of other Courts of Record in Cities, Liberties, and Towns corporate.

THere is mention made before of a Court of Record holden for St. *Martins le Grand* by *Alderſgate*: There is alſo a Court of Record holden in the *Tower* of *London*, for the Liberty of the *Tower*: and another at St. *Katherines* for that Liberty: and a Court of Record kept weekly for the Borough of *Southwark*, for the Liberty thereof, together with many Courts of Records belonging to Caſtles, Mannors, and decayed Monaſteries; as that of the Honour and Caſtle of *Windſor*, and of the diſſolved Monaſtery of St. *Auguſtins* by *Canterbury*: And as to the formality of their Practice (except where they have ſome particular cuſtoms, as in *London*) they all proceed *ad Exemplum* of the Common-Pleas and King's Bench generally; ſo that being acquainted with the practice and proceedings of thoſe Superiour

periour Courts herein largely and plainly before demonſtrated, the Inferiour will eaſily become obvious to your underſtanding.

TAXES.

I. STat. 22 and 23 *Car.* 2. *cap.* 3. A Subſidy of one ſhilling in the pound-rents for one year, granted to the King for ſupply for his extraordinary occaſions. Exp.

II. Stat. 22 and 23 *Car.* 2. *cap.* 9. Several Rates and Sums of Money laid on proceedings at Law, over and above former duties and payments, to be paid for nine years from the firſt day of *May* 1671.

Grants and Franchiſes and Liberties, each skin of Parchment, 40 *s.*

If more than one, for every other skin, 20 *s.*

Other Grants of Lands or Leaſes under the Great, Exchequer, or Dutchy Seal of *Lancaſter*, *per* skin, 20 *s.*

If more than one skin, each other, 10 *s.*

Grants of Money or Pardon under the Great or Privy Seal, not directed to the Great Seal, the skin, 40 *s.*

If containing more than one skin, each more, 20 *s.*

Preſentations, Donations, and Collations to Benefices or Eccleſiaſtical Dignities of 20 *l.* value in the King's Books, 40 *s.*

If but 10 *l.* then 10 *s.*

Vicaridges under a 100 *l.* and exempted, to be proved by Certificate of the Ordinary.

Deeds enrolled in any Court of *Weſtminſter*, or other of Record, 5 *s.*

Writs of Covenant for levying Fines above 6 *s.* 8 *d.*

8 *d.* and under 20 *s.* in the alienation-Office, 3 *s.* 4 *d.*

Above 20 *s.* And besides for meer payment, and the Pre-fine, and Post-fine, 6 *s.* 8 *d.*

Writs of Entry for suffering common Recoveries, 6 *s.* 8 *d.*

Original Writs, Process under Seal of any Court holding Plea of 40 *s.* or more, 6 *d.*

Renewing every such Process, 4 *d.*

Entries of Actions in *London*, or Corporation, or other Court for Debt or Damage of 40 *s.* or more, 6 *d.*

Exemplifications under Seal of any Court *per* skin, 7 *s.* 6 *d.*

If more, for every other skin, 5 *s.*

Every Bill, Answer, and other Pleading, in Equity, in Chancery, Exchequer, and Dutchy-Chamber, 1 *s.*

Copies of Bills and Pleadings there, each sheet, 1 *d.*

In every other Court of Equity or Conscience, for Copies of Pleadings where the Debt or Damage amounts to 40 *s.* or more *per* sheet, 1 *d.*

Orders and Rules in Equity entred, and Reports filed in the Chancery, Exchequer, and Dutchy-Chamber of *Lancaster*, 6 *d.*

Copies of every such Order and Report signed, 3 *d.*

Copies of Declarations and Pleadings, and other Proceedings in the Courts of *Westminster* for which now payable 8 *d.* *per* sheet, 1 *d.*

Of such other for which now payable 4 *d.* *per* sheet, 1 *d.*

Copies of Pleadings in inferiour Courts for Debt or Damages amounting to 40 *s.* or more *per* sheet, 1 *d.*

For every Affidavit, 6 *d.*

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V